JAHANGIR'S
World Times
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Top 20 Questions
SERIES

CRIMINOLOGY

for

CSS, PMS, PCS

& All Other Relevant Exams

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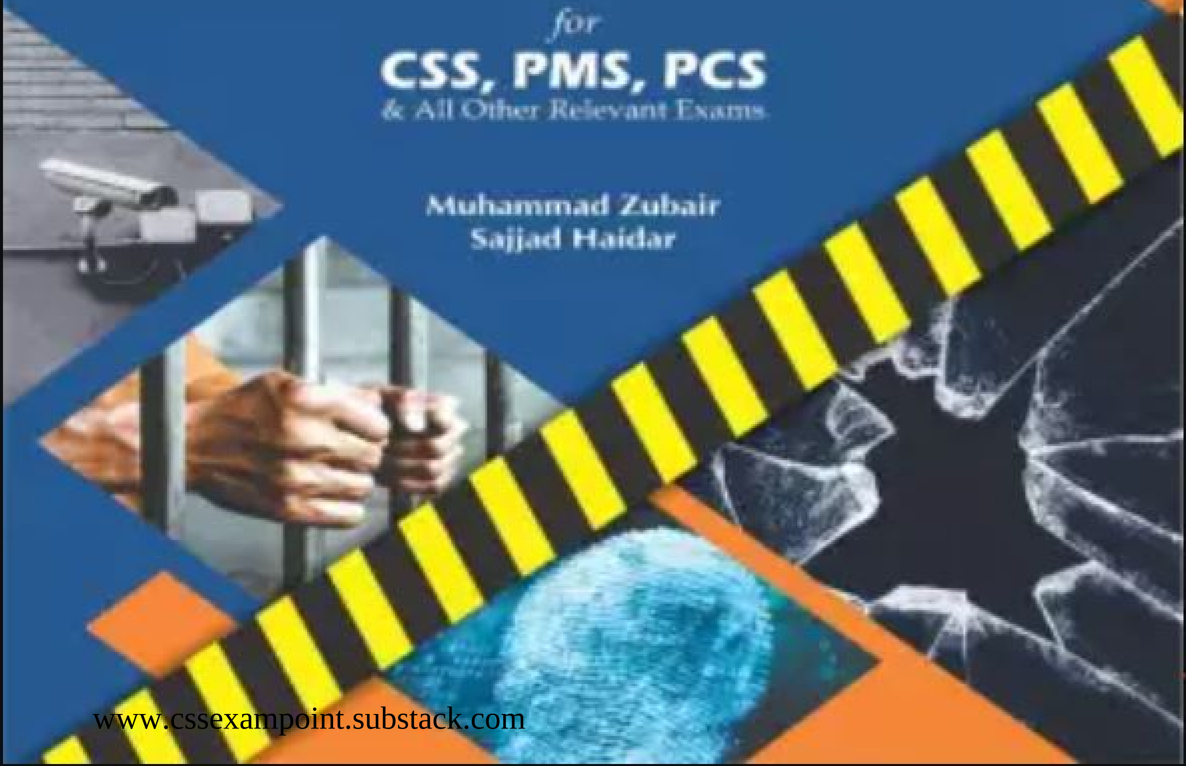

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QUESTION 1

INTRODUCTION AND UNDERSTANDING CRIMINOLOGY

Q. Define Criminology. Discuss the scope of criminology in Pakistan.

(CSS-2018)

Q. Write a critical note on the increasing importance of criminology in Pakistan. Also discuss the historical development of criminology as a scientific discipline. (CSS-2017)

Q. Explain the nature and importance of Criminology in detail. (CSS-2016)

Q. What is the difference between crime and deviance? Also discuss crime and deviance as social phenomena.

ANSWER

INTRODUCTION

Why did areas like Liyari and Kati Pahari in Karachi, Kachi Abadi in Islamabad and Chotu Gang's Kacha Area of Rajanpur play a role in producing notorious criminals? On the other hand, why Gilgit-Baltistan has lower crime cases than Islamabad despite Gilgit-Baltistan having almost double the population than the federal capital? And why the United States has almost nine times higher crime rate than Germany? Criminology is the discipline which gives the answers to such questions. Defined simply, *Criminology is the scientific study of crime and criminal behaviour.* As an academic discipline, Criminology includes the study of all aspects of crime and law enforcement – criminal psychology, the social setting of crime, prohibition and prevention, investigation and detection, capture and punishment. Thus, many of the people involved – legislators, social workers, police officers, probation and parole officers, prosecutors, judges, etc. – could possibly be considered criminologists, though the word usually refers only to scholars and researchers.

I. DEFINITION OF CRIMINOLOGY

- According to Black's Law Dictionary, Criminology is *"The science which treats of crimes and their prevention and punishment"*.
- For Sutherland and Cressey, *"Criminology is the body of knowledge regarding crime as a social phenomenon. It includes within its scope the processes of making laws, of breaking laws, and of reacting toward the breaking of laws. . . . The objective of criminology is the development of a body of general and verified principles and of other types of knowledge regarding this process of law, crime, and treatment."*
- According to another definition, criminology is the study of nature, extent and causes of crime."
- According to Merriam Webster Dictionary, *"Criminology is the scientific study of crime as a social phenomenon, of criminals, and of penal treatment."*

II. SCOPE AND IMPORTANCE OF CRIMINOLOGY IN PAKISTAN

The discipline of criminology has gained importance in recent decades with the surge in crime rates in Pakistan and all across the globe. Once a sub-field of other subjects like Sociology, today's criminology is very vast in its scope.

Crime as a Social Phenomenon

Crime is a social phenomenon, and society and surroundings play very important role in shaping criminal behaviour. Although some criminologists believe that individual traits and characteristics may play some role and cause criminal's antisocial behaviour, most believe that social factors are at the root cause of crime. Even the most disturbed people are influenced by their environment and their social interactions and personal relationships.

The Process of Making Laws

Humans have always had laws. Allah Almighty gave laws to humans through His Holy Books like the Holy Torah, the Holy Bible and the Holy Quran. Then, human societies made laws throughout history like the Code of Hammurabi, Egyptian laws, Babylonian laws and Roman law and the Islamic Law. How and why laws are created and why some are strengthened and others eliminated is of great interest to criminologists.

Over the years Pakistan has made laws regarding all types of crime. In Pakistan, criminal laws are made in legislature at two levels: the federal and provincial legislatures. Major laws regarding crime include

- Pakistan Penal Code (PPC), 1860
- National Accountability Bureau (NAB) Ordinance, 1999
- Federal Investigation Act, 1974
- Prevention of Electronic Crimes Act (PECA), 2016
- Juvenile Justice System Act, 2018
- Anti-Terrorism Act, 1997
- Anti-Money Laundering Act, 2010
- Anti-Narcotics Force Act, 1997

Breaking of Laws

Those who break laws of the society, are called criminals. There are as many types of criminals as there are crimes. At its core, the purpose of criminology is to understand both the onset of crime and the most effective methods for its elimination. What are the causes of crime or do people commit illegal acts, and what can be done to convince them – and others who are contemplating crime – that it is in their best interests not to commit crime? These concepts are naturally bound together: It is impossible to effectively control crime unless we understand its cause. Although risk factors at all levels of social and personal life contribute to youth violence, young people in all nations who experience change in societal-level factors – such as economic inequalities, rapid social change, and the availability of firearms, alcohol, and drugs – seem the most likely to get involved in violence.

Reacting Toward the Breaking of Laws

When somebody breaks the law, the society reacts to it. People do not react themselves. Instead every country in the world has formed institutions to react to crime and provide justice to the criminal and the victim. In Pakistan, the main institutions which react to the breaking of laws include:

- Police
- Courts
- FIA
- NAB
- ANF
- FBR
- Counter-Terrorism Departments (CTDs or CTF)
- Intelligence Agencies

Development of a Body of General and Verified Principles

Sutherland and Cressey recognize that '*criminology is a social science and criminologists must use the scientific method when conducting research*'. Criminologists are required to employ valid and reliable experimental designs and sophisticated data analysis techniques or else lose standing in the academic community.

Scope of Criminology also includes the following sub areas:

Theory Construction and Testing

The scope of the discipline of criminology also includes predicting individual behaviour and understanding the causes of crime, crime rates and future trends. Theories of criminology also help people understand various factors which influence people's criminal behaviour. For example, Stain Theory predicts that the economically deprived segments of society are more likely to engage in street crime and other theft crimes.

Penology and Social Control

The scope of the discipline of criminology also includes studying the correction and control of criminal behaviour. The discipline also includes using scientific methods to assess the effectiveness of crime and offender treatment programmes like prison management structuring the rehabilitation centres.

Victimology and Victimization

It includes studying the nature and causes of victimization and victimization risks. What is the role, if any, of victims in the causes of crime?

Criminology and Criminal Justice

Although the terms criminology and criminal justice may seem similar, and people often confuse the two or lump them together, there are major differences between these fields of study. Criminology explains the aetiology (origin), extent, and nature of crime in society, whereas criminal justice refers to the study of the agencies of social control – police, courts, and corrections. While criminologists are mainly concerned with identifying the suspected cause of crime, criminal justice scholars spend their time identifying effective methods of crime control.

Since both fields are crime related, they do overlap. Some criminologists devote their research to justice and social control and are concerned with how the agencies of justice operate, how they influence crime and criminals, and how justice policies shape crime rates and trends. Conversely, criminal justice experts often want to design effective programmes of crime prevention or rehabilitation and to do so must develop an understanding of the nature of crime and its causes. It is common, therefore, for criminal justice programmes to feature courses on criminology and for criminology courses to evaluate the agencies of justice.

Role of Criminology in Government Policy Making

Criminological concepts and research findings are considered and utilized by government institutions and law enforcement agencies across the globe. The discipline of Criminology certainly has the potential to help the government in formulating effective policies for crime prevention and for improvement of the criminal justice system. It also assists the government legislators in legislating practicable laws to deter and then punish criminal behaviour.

Criminology and Deviance

Criminology is also related to the study of deviant behaviours – those actions that depart from social norms, values, and beliefs. Included within the broad spectrum of deviant acts are behaviours ranging from violent crimes to joining a nudist colony. However, significant distinctions can be made between these two areas of study because many crimes are not unusual or deviant, and many deviant acts are neither illegal nor criminal.

Take, for instance, substance abuse. Selling and/or possessing recreational drugs, such as marijuana, may be illegal, but can it actually be considered deviant? For example, in the United States, a significant percentage of the population have used or are using drugs; more than half of all high school students have tried drugs before they graduate. Therefore, it is erroneous to argue that all crimes are deviant behaviours that depart from the norms of society.

Similarly, many deviant acts are not criminal even though they may be both disturbing and shocking to the conscience. Suppose a passer-by witnesses someone floundering in the ocean and makes no rescue attempt. Most people would condemn the onlooker's cold hearted behaviour as callous, immoral, and deviant. However, no legal action could be taken since a private citizen is not required by law to risk his or her own life to save another's. There is no legal requirement that a person rush into a burning building, brave a flood, or jump into the ocean to save someone from harm. They may be deviant and not share commonly held values, but according to the law, they are not criminals.

III. NATURE OF CRIMINOLOGY

Criminology is an ***inter-disciplinary*** field in both the behavioural and social sciences, and draws primarily upon the research of sociologists, psychologists, philosophers, economists, psychiatrists, biologists, social anthropologists, as well as scholars of law. Although the defining statements of criminology are rooted across these diverse areas, contemporary criminology is becoming ever more intertwined with still additional sciences and professional fields such as geography, social work, and public health.

This plurality of influences, often referred to as ***multi-disciplinarity***, is altogether logical given the complex subject-matter and diverse nature of crime. Scholarly attention to crime from various perspectives allows for an extensive range of research questions to be addressed, making possible a fuller understanding of the criminal mind, the nature of crime, and social control processes. Legal scholarship, for example, ranges from philosophical attention to social justice issues to technocratic factors determinant of case outcome. Alternatively, psychology approaches the topic of crime with a focus on individual-level maladjustment and behavioural abnormality. Sociological criminology differs still by concentrating on the multiple causes and nature of crime, as well as society's reaction to it.

The individuals who study crime, criminologists, engage research on virtually every imaginable aspect of illegality and society's reactions to it, ranging from the development of theories of crime causation, the roles and uses of social control (e.g. police, courts, and corrections), crime prevention, and victimization. Of course, criminologists have also developed substantial knowledge bases on specific offences, which are often categorized as (a) crimes against property (e.g. burglary, theft, robbery, and shoplifting); (b) crimes against a person (e.g., homicide, assault, and rape); (c) morality/social order crimes (e.g. gambling, prostitution, substance offences, vandalism); and now (d) technology crime/cybercrime, which overlaps with and often facilitates crime in each of the other categories.

The collective basic knowledge that criminologists have generated through the scientific process has great potential for informing social policy and criminal justice practice through enhancement of the effectiveness and efficiency of prevention, intervention, enforcement, and rehabilitative strategies and practices in the 21st century.

The rise of academic criminal justice is acknowledged as a shaping force on criminology that is steadily moving the discipline toward greater interdisciplinary status and public policy utility.

IV. HISTORICAL DEVELOPMENT OF CRIMINOLOGY AS A SCIENTIFIC DISCIPLINE

The 1800s saw the emergence and growth of the science and the establishment of separate disciplines and research areas. In 1885, Raffaele Garofalo (a student of Lombroso) published Criminology, in which he used the word criminology to refer to the science of explaining crime. A series of books written in the late 1800s established criminology as a field of study, but, unlike other social sciences, this did not become reflected in the structure of disciplines in universities; neither did national or international organizations emerge to promote this field of social science. It would not be until the 1940s that these signs of a new science of crime and justice would emerge. Criminology is correctly understood and best practised as a social science. Furthermore, as a field of scientific inquiry criminology is no longer a specialty area of other established disciplines, such as deviance within sociology or abnormal psychology, but instead is a new and steadily growing independent academic discipline in its own right.

In the 18th and early 19th centuries, the emphasis of criminology was on the reform of criminal law and not on the causes of crime. Scholars such as Cesare Beccaria and Jeremy Bentham, were more concerned with the humanitarian aspects in dealing with criminals and reforming several criminal laws. Great progress in criminology was made after the first quarter of the 20th century. The first American textbook on criminology was written in 1920 by sociologist Maurice Parmalee under the title *Criminology*. Programmes were developed for the specific purpose of training students to be criminologists, but the development was rather slow.

For almost two centuries after Beccaria's work, criminologists did not pay consistent and organized attention to the criminal justice system; instead, the tradition of criminology begun by Lombroso – the search for the causes of crime – was the focus of criminology until the last half of the 20th century. This period of search for the causes of crime passed through four distinct phases of theoretical development:

FOUR PHASES OF THEORETICAL DEVELOPMENT OF CRIMINOLOGY

1. Single Factor Reductionism

Lombroso argued that all crime could be explained by a single factor: a failure of evolution.

2. Systemic Reductionism

During this period the explanation of crime causation was constrained by the sociological system of knowledge. Systemic reductionism (i.e. explaining a phenomenon from a singular knowledge system or discipline perspective) expanded beyond sociology, but it was the sociological perspective that dominated criminological theory for many years and even today is the dominant theoretical perspective. The importance of systemic reductionism can be seen in many criminological textbooks that organize the discussion of crime causation into a series of sections – sociological explanations, psychological explanations, and biological explanations – each presented as if these systems of knowledge were unrelated to each other and each providing competing ways of explaining crime.

3. Multidisciplinary Theories

Of course, sociologists were not the only ones interested in the causes of crime. While sociology was dominating the study of crime in universities, psychologists, biologists, and others were considering how their disciplines or theoretical perspectives would explain such behaviour. Furthermore, it became clear that these other perspectives offered reasonable approaches as well as some research that demonstrated that the approach had some level of empirical support. Gradually, a model of crime explanation emerged that is still with us today, especially in standard criminological texts: the multidisciplinary explanation of criminal behaviour. This approach argues that people become criminals because of a set of explanations drawn from all of the social and behavioural sciences, including biology, psychology, anthropology, economics, and sociology. Only by using all of these perspectives can one understand criminal behaviour.

4. Interdisciplinary Theory

Criminology as a separate field of study emerges when the model underlying the explanation of criminal behaviour becomes interdisciplinary. Only then does an intellectual justification for a separate field of study in universities exist that is compelling enough to support such a development. Today, the leading journal in criminology – the Journal of the American Society of Criminology – has as its subtitle An Interdisciplinary Journal; a clear statement of the importance of this perspective to criminology.

What, however, is meant by interdisciplinary theory? Most obviously, this approach assumes that more than one discipline is needed to explain criminal behaviour. Any approach to explanation that is built on one discipline is by definition incomplete. However, if we have only explanations based on the accumulation of variables from different disciplines, then we have what the Gluecks proposed: multidisciplinary explanations. So, an interdisciplinary theory goes beyond the assembly of contributions of different disciplines and integrates the contributions of these different disciplines into a coherent theory of criminal behaviour.

This approach emphasizes bringing perspectives together, not the competition of perspectives to see which one is "right." For example, the question is not whether nature or nurture causes crime but rather how they interact to account for individual variations in criminal behaviour. It is not a question of why does poverty seem to be associated with higher crime rates but rather how do individual development and poverty interact to explain why some people are delinquent and others are not.

THE FUTURE OF CRIMINOLOGY AND CRIMINAL JUSTICE

During the past 40 years, criminology has emerged as one of the most dynamic social sciences and certainly the fastest growing. Today, it stands on clear foundations of commitment to scientific rigour, interdisciplinary theory of crime, and improving the operation and "justness" of the criminal justice system.

CONCLUSION

In conclusion, contemporary Criminology rests on two foundations: (1) the interdisciplinary explanation of crime, and (2) the analysis of the fairness and effectiveness of the criminal justice system. Both of these fundamental aspects of criminology are informed by, as Beccaria, Lombroso, and Sutherland wanted, by the application of scientific methods.

QUESTION 2

(a) CRIME AND CRIMINALS

(b) CRIMINAL LAW

Q. Define the term Crime and Criminals. Explain the Types of Criminals in detail. (CSS-2016)

Q. Criminal Law. (Short Note CSS-2016)

Q. Discuss the concept of Criminal Law and its evolution in the contemporary world.

ANSWER

(a) Crime and Criminals

INTRODUCTION

Crime is the violation of written laws of a state. In Pakistan's context, violation of Constitution, Pakistan Penal Code, NAB Ordinance, FIA Act, anti-money laundering laws, consumer laws and anti-terrorism laws and violation of other such laws of the state are crimes. The history of crime is as old as the humans themselves. Initially, the breaking of religious laws was considered as crime or sin. With the development of the nation-state system, the violation of laws enacted by state is regarded as crime. Similarly, a criminal is the one who violates the law of the state. There are as many types of criminals as there are crimes.

The Definition of Crime

The definition of crime affects how criminologists view the cause and control of illegal behaviour and shapes their research orientation.

Conflict View

- The law is a tool of the ruling class.
- Crime is a politically defined concept.
- "Real crimes" are not outlawed.
- The law is used to control the underclass.

Consensus View

- The law defines crime.
- The law reflects public opinion.
- Agreement exists on outlawed behaviour.
- Laws apply to all citizens equally.

Interactionist View

- Moral entrepreneurs define crime.
- Crimes are illegal because society defines them that way.
- The definition of crime evolves according to the moral standards of those in power.

TYPES OF CRIMES

Major types of crimes include

1. Crimes against State

Crimes against state and country consist of treason, terrorism, corruption and money laundering among others.

2. Crimes against Persons

Crimes against persons homicide or murder, assault, battery, rape, robbery.

3. Crimes against Property

Property crimes include theft, burglary, arson, larceny, white-collar crimes.

4. Crimes against Public Morality and Social Order

These are Gambling, drug abuse, prostitution.

5. Technology Crimes/Criminals

Technology crimes include cybercriminals, violation of intellectual property rights.

6. Organized Crime

Organized crimes include drug trafficking, human trafficking and money laundering.

7. Corporate Crime

Such crimes include environmental crimes and other violations of tax laws.

CRIMES REPORTED BY TYPES AND PROVINCES IN PAKISTAN

Offence	Punjab	Sindh	KP	Balochistan	Islamabad	Railways	G.B.	AJK	Pakistan
January 2018 to January 2019									
Murder	4017	1308	2320	352	103	2	76	63	8241
Attempt to Murder	5093	1590	2628	348	171	1	89	147	10067
Kidnapping/ Abduction	14981	3167	1188	269	123	3	38	291	20060
Dacocity	793	509	39	28	39	0	2	4	1414
Robbery	11128	2959	271	151	351	3	12	39	14914
Burglary	11425	1560	823	158	373	0	110	197	14646
Cattle Theft	5569	352	155	58	32	0	33	34	6233
Other Theft	34572	2636	889	290	574	300	66	91	39418
Others	323456	69252	171230	7109	7699	1420	1437	6885	588488
TOTAL RECORDED CRIME	**411034**	**83333**	**179543**	**8763**	**9465**	**1729**	**1863**	**7751**	**703481**

TYPES OF CRIMINALS

1. Occasional Criminals

Occasional criminals are those criminals who engage in crime due to occasional circumstances. They may become occasional street criminals or occasional drug abusers.

2. Habitual Criminals

They are the criminals for whom crime becomes a habit and a kind of profession. They include gangsters like thieves, robbers, and kidnappers among others.

3. Organized Criminals

They are not individual criminals. Rather they operate in organized networks. They include human traffickers, child traffickers, drug traffickers, and money launderers among others.

4. Criminals against State and Country

They include criminals like traitors, terrorists, corrupt people, money launderers and white-collar criminals. Criminals and traitors like Shakeel Shah Afridi fall into this category. Khanani and Kalia were notorious money launderers who damaged the reputation of country.

5. Criminals against Persons

Criminals against persons include murderers, assailers, rape, and robbers. Such criminals pose threat to life of persons.

6. Property Criminals

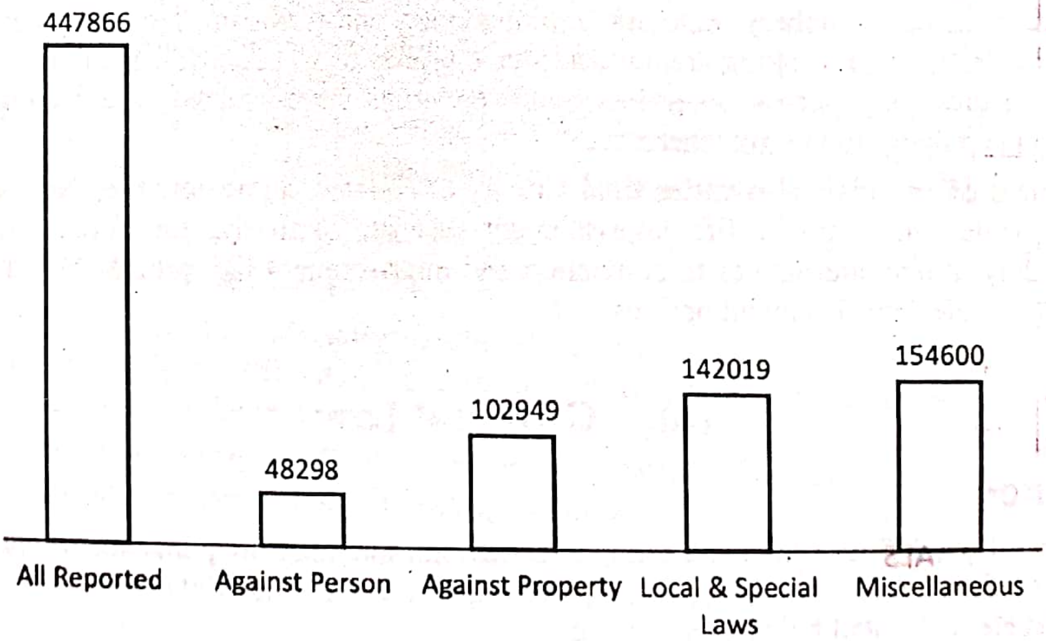
Such criminals include thieves, burglars, arson, people involved in corruption, and other white-collar criminals.

7. Criminals against Public Morality and Social Order

Public morality and social order criminals include gamblers, drug abusers, and prostitutes.

8. Cybercriminals and Technology Criminals

They include cybercriminals, violators of intellectual property rights.



PUNJAB CRIME PROFILE

(Jan. to Nov. 2019)

Sindh Crime Profile 2019 (PERIOD OF 01-01-2018/2019 TO 15-10-2018/2019)

HEADS	Karachi		Sukkur		Larkana		Hyderabad		Mirpurkhas		S.B.Abad		Sindh province	
	2018	2019	2018	2019	2018	2019	2018	2019	2018	2019	2018	2019	2018	2019
Crime against person	3760	3973	1826	1633	1926	2033	2227	2155	406	394	777	837	10922	11025
Crime against property	8811	10193	637	598	644	569	972	1075	231	246	353	605	11648	13286
Miscellaneous	8030	12555	1420	1313	1218	1755	3647	5092	797	1147	1980	2333	17092	24195
BLASPHEMY (offences relating to religion)	3	8	5	13	3	6	7	14	7	6	3	5	28	52
Accidents	461	457	39	69	64	51	101	93	16	15	25	25	706	701
Local & special laws (Good Work By Police)	11529	11217	1479	1921	1422	1551	3583	3747	753	724	1463	2071	20229	21231

LAWS FOR PUNISHMENTS OF CRIMES AND CRIMINALS IN PAKISTAN

In Pakistan, the punishments for various crimes vary according to the severity of crimes. The severer the crime, the severer the punishment. In Pakistan's context, the punishments for crimes and criminals are written mainly in the Pakistan Penal Code (PPC), 1860; in NAB Ordinance, 1999 for white-collar crimes; in FIA Act, 1974 for corruption and other various types of crimes and frauds, in Anti-Money Laundering Act, 2010 for money launderers, in Anti-Terrorism Act, 1997 for terrorists and in Anti-Narcotics Force Act, 1997 for drugs-related crime. For juvenile criminals, Pakistan has Juvenile Justice System Act, 2018.

CONCLUSION

There are certain crimes in the world which have been incriminated throughout the world such as murder, assault, theft, robbery, rape, money laundering and terrorism. However, certain acts like gambling, prostitution and drinking are not considered crimes in all countries. Similarly, definitions of white-collar crimes vary across countries. Some countries have created safe havens for money launderers to keep their money over there.

Treatment of criminals also varies from country to country. Some countries have death penalty for murder while others prefer life imprisonment instead. Similarly, for minor offences, some countries widely utilize alternatives to conviction and imprisonment like probation and parole while other countries prefer imprisonment options.

(b) Criminal Law

INTRODUCTION

Criminal Law defines crime and criminal behaviour and suggests punishments for crimes. It is therefore important for all criminologists to have some understanding of the development of law, its objectives, its elements, and how it has evolved.

A BRIEF HISTORY OF THE LAW

The concept of criminal law has been recognized for more than 3,000 years. Hammurabi (1792-1750 BCE), the sixth king of Babylon, created the most famous set of written laws of the ancient world, known today as the Code of Hammurabi. Preserved on basalt rock columns, the code established a system of crime and punishment based on physical retaliation ("an eye for an eye"). The severity of punishment depended on class standing: if convicted of an unprovoked assault, a slave would be killed, whereas a freeman might lose a limb.

More familiar is the Mosaic Code of the Israelites (1200 BCE). According to tradition, God entered into a covenant or contract with the tribes of Israel in which they agreed to obey his law (the 613 laws of the Old Testament, including the Ten Commandments), as presented to them by Moses, in return for God's special care and protection. Prohibitions against murder, theft, and perjury preceded by several thousand years the same laws found in the modern world.

The Islamic Law and Jurisprudence also made great contribution in the legal domain. The Islamic Sharia Law regulates the public as well as family life of the Muslims.

Though ancient formal legal codes were lost during the Dark Ages, early German and Anglo-Saxon societies developed legal systems featuring monetary compensation for criminal violations. Guilt was determined by two methods. One was compurgation, in which the accused person swore an oath of innocence with the backing of 12 to 25 oath helpers, who would attest to his or her character and claims of innocence. The second was *trial by ordeal*, which was based on the principle that divine forces would not allow an innocent person to be harmed. It involved such measures as having the accused place his or her hand in boiling water or hold a hot iron. If the wound healed, the person was found innocent; if the wound did not heal, the accused was deemed guilty. Another version, *trial by combat*, allowed the accused to challenge his accuser to a duel, with the outcome determining the legitimacy of the accusation. Punishments included public flogging, branding, beheading, and burning.

COMMON LAW

After the Norman conquest of England in 1066, royal judges began to travel throughout the land, holding court in each shire several times a year. When court was in session, the royal administrator, or judge, would summon a number of citizens who would, on their oath, tell of the crimes and serious breaches of the peace that had occurred since the judge's last visit. The royal judge would then decide what to do in each case, using local custom and rules of conduct as his guide. Courts were bound to follow the law established in previous cases unless a higher authority, such as the king or the pope, overruled the law.

THE LAW IN CONTEMPORARY SOCIETY

In contemporary society, the law governs almost all phases of human enterprise, including commerce, family life, property transfer, and the regulation of interpersonal conflict. It contains elements that control personal relationships between individuals, and public relationships between individuals and the government. The former is known as civil law, and the latter is called criminal law.

The law can generally be divided into four broad categories:

1. **Substantive criminal law.** The branch of the law that defines crimes and their punishment is known as substantive criminal law such as the Pakistan Penal Code (PPC), 1860. It involves such issues as the mental and physical elements of crime, crime categories, and criminal defences.

2. **Procedural criminal law.** Those laws that set out the basic rules of practice in the criminal justice system are procedural criminal laws such as the Criminal Procedure Code (CrPC) 1898. Some elements of the law of criminal procedure are the rules of evidence, the law of arrest, the law of search and seizure, questions of appeal, jury selection, and the right to counsel.
3. **Civil law.** The set of rules governing relations between private parties, including both individuals and organizations (such as business enterprises or corporations), is known as civil law. The civil law is used to resolve, control, and shape such personal interactions as contracts, wills and trusts, property ownership, and commerce.
4. **Public or administrative law.** The branch of law that deals with the government and its relationships with individuals or other governments is known as public law. It governs the administration and regulation of city, county, state, and federal government agencies.

The four categories of the law can be interrelated. A crime victim may file a tort action against a criminal defendant and sue for damages in a civil court. Under tort law, a crime victim may sue even if the defendant is found not guilty because the evidentiary standard in a civil action is less than is needed for a criminal conviction (preponderance of the evidence versus beyond a reasonable doubt). In some instances, the government has the option to pursue a legal matter through the criminal process, file a tort action, or bring the matter before an administrative court. White-collar crimes often involve criminal, administrative, and civil penalties.

Criminal laws are divided into felonies and misdemeanours. The distinction is based on seriousness: a felony is a serious offence; a misdemeanour is a minor or petty crime. Crimes such as murder, rape, and burglary are felonies; they are punished with long prison sentences or even death. Crimes such as unarmed assault and battery, petty larceny, and disturbing the peace are misdemeanours; they are punished with a fine or a short period of incarceration.

Regardless of their classification, acts prohibited by the criminal law constitute behaviours considered unacceptable and impermissible by those in power. People who engage in these acts are eligible for severe sanctions. By outlawing these behaviours, the government expects to achieve a number of social goals.

GOALS OR OBJECTIVES OF CRIMINAL LAW

1. **Maintaining social order.** All legal systems are designed to support and maintain the boundaries of the social system they serve. In medieval England, the law protected the feudal system by defining an orderly system of property transfer and ownership. Laws in some socialist nations protect the primacy of the state by strictly curtailing profiteering and individual enterprise. The capitalist system is also supported and sustained by criminal law. In a sense, the content of criminal law is more a reflection of the needs of those who control the existing economic and political system than a representation of some idealized moral code.
2. **Enforcing social control.** Those who hold political power rely on criminal law to formally prohibit behaviours believed to threaten societal well-being or to challenge their authority. For example, US criminal law incorporates centuries-old prohibitions against the following behaviours harmful to others: taking another person's possessions, physically harming another person, damaging another person's property, and cheating another person out of his or her possessions. Similarly, the law prohibits actions that challenge the legitimacy of the government, such as planning its overthrow, collaborating with its enemies, and so on.

3. **Discouraging revenge.** By punishing people who infringe on the rights, property, and freedom of others, the law shifts the burden of revenge from the individual to the state. As Oliver Wendell Holmes stated, this prevents "the greater evil of private retribution." Although state retaliation may offend the sensibilities of many citizens, it is greatly preferable to a system in which people would have to seek justice for themselves.
4. **Expressing public opinion and morality.** Criminal law reflects constantly changing public opinions and moral values. Mala in se crimes, such as murder and forcible rape, are almost – universally prohibited; however, the prohibition of legislatively created mala prohibitum crimes, such as traffic offenses and gambling violations, changes according to social conditions and attitudes. Criminal law is used to codify these changes.
5. **Deterring criminal behaviour.** Criminal law has a social control function. It can control, restrain, and direct human behaviour through its sanctioning power. The threat of punishment associated with violating the law is designed to prevent crimes before they occur. During the Middle Ages, public executions drove this point home. Today criminal law's impact is felt through news accounts of long prison sentences and an occasional execution.
6. **Punishing wrongdoing.** The deterrent power of criminal law is tied to the authority it gives the state to sanction or punish offenders. Those who violate criminal law are subject to physical coercion and punishment.
7. **Providing restoration.** Victims deserve restitution or compensation for their pain and loss. The criminal law can be used to restore to victims what they have lost. Because we believe in equity and justice, it is only fair that the guilty help repair the harm they have caused others by their crimes. Punishments such as fines, forfeiture, and restitution are connected to this legal goal.

THE EVOLUTION OF CRIMINAL LAW

The criminal law is constantly evolving in an effort to reflect social and economic conditions. Sometimes legal changes are prompted by highly publicized cases that generate fear and concern. The criminal law may also change because of shifts in culture and social conventions, reflecting a new-found tolerance of behaviour condemned only a few years before.

TECHNOLOGICAL REVOLUTION AND CRIMINAL LAW

Changing technology and the ever-increasing role of technology in people's daily lives will require modifications of the criminal law. Such technologies as automatic teller machines and cellular phones have already spawned a new generation of criminal acts involving theft of access numbers and software piracy. For example, a modification to Virginia's Computer Crimes Act that took effect in 2005 makes phishing – (*sending out bulk e-mail messages designed to trick consumers into revealing bank account passwords, Social Security numbers, and other personal information)* – a felony. Those convicted of selling the data or using the data to commit another crime, such as identity theft, now face twice the prison time.

CONCLUSION

Criminal law is a dynamic field within the discipline of criminology. Since the emergence of new technology, there is a constant need for revision of old laws and making of new laws to define criminal behaviour and suggest punishments.

QUESTION 3

CRIME AND CRIMINALITY: EARLY EXPLANATIONS ABOUT CRIMINAL BEHAVIOUR

Q. **What were the early explanations about causes of crime? How were criminals judged and punished before the development of the modern criminal justice system?**

Q. **People are rational actors and they commit crime after doing a cost-benefit analysis. Explain this statement with reference to Beccaria's Classical or Rational Theory of Crime.**

ANSWER

INTRODUCTION

It is one of the most important objectives of Criminology to explain criminality *(tendency to commit crime)* and the causes of crime. Theories in criminology explain why people commit *(or do not commit)* crime. A theory explains, describes and predict things. A valid theory must

(a) have the ability to be able to predict future occurrences or observations of the phenomenon in question, and

(b) have the ability to be validated or tested through experiment or some other form of empirical observation like surveys and questionnaires.

So, for example, if a theory states that watching violent TV shows leads to aggressive behaviour, it can be considered valid only if careful and empirically sound tests can prove that kids who watch a lot of violent TV in the present will one day become violent in the future.

Since the late 19th century, criminological theory has pointed to various underlying causes of crime. The earliest theories generally attributed crime to a single underlying cause: atypical body build, genetic abnormality, insanity, physical anomalies, socialization, or poverty. More recent theoretical efforts are more dynamic, incorporating multiple personal and social factors into a complex web to explain the onset, continuation, and eventual desistance from a criminal career.

EARLY EXPLANATIONS ABOUT CRIMINAL BEHAVIOUR

During the early Middle Ages (1200-1400), superstition and fear of satanic possession dominated thinking. People who violated social norms or religious practices were believed to be witches or possessed by demons and not rational decision makers. St. Thomas Aquinas (1225-1274) argued that there was a God-given "natural law" that was based on people's natural tendency to do good.

The prescribed method for dealing with the possessed was burning at the stake, a practice that survived into the 17th century. Beginning in the mid-13th century, the jurisdiction of central governments reached a significantly broader range of social behaviours. Human problems and conflicts began to be dealt with in a formalized and legal manner. Nonetheless, superstition and harsh punishments did not end quickly. The authorities were on guard against Satan's offspring, who engaged in acts ranging from witchcraft to robbery. Between 1581 and 1590, Nicholas Remy, head of the Inquisition in the French province of Lorraine, ordered 900 sorcerers and witches burned to death; likewise, Peter Binsfield, the bishop of the German city of Trier, ordered the death of 6,500 people. An estimated 100,000 people were prosecuted throughout Europe for witchcraft during the 16th and 17th centuries. It was also commonly believed that some families produced offspring who were unsound or unstable and that social misfits were inherently damaged by reason of their "inferior blood." It was common practice to use cruel tortures to extract confessions, and those convicted of violent or theft crimes suffered extremely harsh penalties, including whipping, branding, maiming, and execution. Almost all felons were punished with death; the law made little distinction between thieves and murderers.

This rather fantastical vision of deviant behaviour and its control began to wane as new insights were developed about human nature and behaviour during the Renaissance. One influential authority, philosopher Thomas Hobbes, suggested the existence of a "social contract" between people and the state: people naturally pursue their own self-interests but are rational enough to realize that selfishness will produce social chaos, so they agree to give up their own selfish interests as long as everyone else does the same thing. Not all agree to the social contract, and therefore the state became empowered with the right to use force to maintain the contract.

CLASSICAL CRIMINOLOGY AND RATIONAL THEORY OF CRIME

Jeremy Bentham's Utilitarian Theory

During the 18th century Enlightenment period, social philosophers such as Jeremy Bentham began to embrace the view that human behaviour was a result of rational thought processes.

According to Bentham's "utilitarian calculus," people choose to act when, after weighing costs and benefits, they believe that their actions will bring them an increase in pleasure and a reduction of pain. It stands to reason that criminal behaviour could be eliminated or controlled if would-be law violators could be convinced that the pain of punishment exceeds the benefits of crime. The purpose of law is to produce and support the total happiness of the community it serves. Because punishment is in itself harmful, its existence is justified only if it promises to prevent greater evil than it creates. Punishment, therefore, has four main objectives.

1. To prevent all criminal offences.
2. When it cannot prevent a crime, to convince the offender to commit a less serious crime.
3. To ensure that a criminal uses no more force than is necessary.
4. To prevent crime as cheaply as possible.

Cesare Beccaria's Rational Theory of Crime

The development of rational classical criminology is most closely identified with the thoughts of Italian criminologist Cesare Beccaria (1738-1794), and his famous treatise, *On Crimes and Punishment* in which he called for fair and certain punishment to deter crime. He believed people are egotistical and self-centred, and therefore they must be motivated by the fear of punishment, which provides a tangible motive for them to obey the law and suppress the "despotic spirit" that resides in every person. Beccaria suggested that

- **(a)** people choose all behaviour, including criminal behaviour;
- **(b)** their choices are designed to bring them pleasure and reduce pain;
- **(c)** criminal choices can be controlled by fear of punishment; and
- **(d)** the more severe, certain, and swift the punishment, the greater its ability to control criminal behaviour.

While necessary, Beccaria also believed that punishment must be *proportional* to the seriousness of crime; if not, people would be encouraged to commit more serious offences. For example, if robbery, rape, and murder were all punished by death, robbers or rapists would have little reason to refrain from killing their victims to eliminate them as witnesses to the crime. Today, this is referred to as the concept of *marginal deterrence* – if petty offences were subject to the same punishment as more serious crimes, offenders would choose the more serious crime because the resulting punishment would be about the same.

Beccaria also suggested that the extremely harsh punishments of the day and routine use of torture were inappropriate and excessive. To deter crime, *the pain of punishment must be administered in a fair, balanced, and proportionate amount, just enough to counterbalance the pleasure obtained from crime*. Beccaria stated his famous theorem like this:

In order for punishment not to be in every instance, an act of violence of one or many against a private citizen, it must be essentially public, prompt, necessary, the least possible in the given circumstances, proportionate to the crimes, and dictated by the laws.

BASIC ELEMENTS OF CLASSICAL RATIONAL THEORY

The writings of Beccaria and his followers form the core of what today is referred to as classical criminology. As originally conceived in the 18th century, classical criminology theory had several basic elements:

- In every society, people have free will to choose criminal or lawful solutions to meet their needs or settle their problems.
- Criminal solutions can be very attractive because for little effort they hold the promise of a huge payoff.
- A person will choose not to commit crime only if he or she believes that the pain of expected punishment is greater than the promise of reward. This is the principle of deterrence.
- In order to be an effective crime deterrent, punishment must be severe, certain, and swift enough to convince potential criminals that "crime does not pay."

According to Beccaria, the new Criminal Justice System would be based on some principles.

BECCARIA'S PRINCIPLES FOR CRIMINAL JUSTICE SYSTEM

- Social action and legislation should be based on the "utilitarian principle of the greatest happiness for the greatest number".
- Crime is an injury to society, and the only rational measure of crime is the extent of the injury.
- Crime prevention is more important than punishment. Laws must be published so that the citizenry can understand and support them.
- In criminal procedure, secret accusations and torture must be abolished. There should be speedy trials, and accused persons should have every right to present evidence in their defence.
- The purpose of punishment is to prevent crime. Punishment must be swift, certain, and severe. Penalties must be based on the social damage caused by the crime. There should be no capital punishment. Life imprisonment is a better deterrent. Capital punishment is irreparable and makes no provision for mistakes.
- Imprisonment should be widely used, but prison conditions should be improved through better physical quarters and by separating and classifying inmates as to age, sex, and criminal histories.

Beccaria's ideas and writings inspired social thinkers to believe that criminals choose to commit crime and that crime can be controlled by judicious punishment. His vision was widely accepted throughout most of the industrialized world.

CONTEMPORARY RATIONAL CHOICE APPROACH

According to the contemporary rational choice approach, law-violating behaviour occurs when an offender decides to risk breaking the law after considering both personal factors (i.e. the need for money, revenge, thrills, and entertainment) and situational factors (i.e. how well a target is protected and the efficiency of the local police force). People who believe that the risks of crime outweigh the rewards may decide to go straight. If they think they are likely to be arrested and punished, they are more likely to seek treatment and turn their lives around than risk criminal activities. The decision to forgo crime is reached when the potential criminal believes that risks outweigh rewards. People will forgo crime if after a careful evaluation of the circumstances they conclude that:

- They stand a good chance of being caught and punished.
- They fear the consequences of punishment.
- They risk losing the respect of their peers, damaging their reputations, and experiencing feelings of guilt or shame.
- The risk of apprehension outweighs the profit and/or pleasure of crime.

LIMITATIONS OF THE RATIONAL THEORY: IS CRIME RATIONAL?

What about common crimes of theft and violence? Are these criminal acts rational or unplanned, haphazard, and spontaneous? Not every act is rational. But most of the criminals appear to have done cost benefit analysis before choosing to commit crime. It is relatively easy to show that some crimes are the product of rational, objective thought, especially when they involve an ongoing criminal conspiracy centred on economic gain. The stock market manipulations of Enron and WorldCom executives, the drug dealings of international cartels, and the gambling operations of organized crime bosses all demonstrate a reasoned analysis of market conditions, interests, and risks. Even small-time wheeler-dealers are guided by their rational assessment of the likelihood of apprehension and take pains to avoid detection.

CONCLUSION

The early explanations of causes of crime laid emphasis on supernatural and superstitious things caused criminal behaviour. And the methods used for investigation and punishment were also based on superstitions like *Trial by Combat* and *Trial by Ordeal*. On the other hand, Classical and Rational Choice criminologists like Beccaria hold the view that criminals are rational actors who plan their crimes, fear punishment, and deserve to be penalized for their misdeeds. In a 1975 book that came to symbolize renewed interest in classical views, *Thinking About Crime*, political scientist James Q. Wilson debunked the view that crime was a function of external forces, such as poverty, that could be altered by government programmes. Instead, he argued, efforts should be made to reduce criminal opportunity by deterring would-be offenders and incarcerating known criminals. People who are likely to commit crime, he maintained, lack inhibition against misconduct, value the excitement and thrills of breaking the law, have a low stake in conformity, and are willing to take greater chances than the average person. If they could be convinced that their actions will bring severe punishment, only the totally irrational would be willing to engage in crime.

QUESTION 4

(a) THEORETICAL AND CRIMINOLOGICAL PERSPECTIVES

(b) BIOLOGICAL THEORIES OF CRIME

(c) PSYCHOLOGICAL THEORIES OF CRIME

Q. Enlist the criminological perspectives. Briefly describe the three criminological perspectives on the study of crime and criminal behaviour. (CSS-2017)

Q. Define and Differentiate between the Biological and Psychological theories about causes of crime. Are these theories still relevant in the contemporary research on crime causation?

ANSWER

(a) Theoretical and Criminological Perspectives

1. **Early Explanations about Crime**
2. **Classical or Rational Choice Theory**
3. **Biological Perspective**
   - (a) Body Type Theory
   - (b) Extra-Y Chromosome Theory
4. **Psychological Perspective**
   - (a) Psychodynamic Theory
   - (b) Behavioural Theory
   - (c) Social Learning Theory
   - (d) Cognitive Theory
   - (e) Intelligence and Crime
   - (f) Psychopathy
5. **Sociological Perspective**
   - (a) Social Disorganization theory
   - (b) Strain Theory
   - (c) Social Control theory
   - (d) Learning Theory
   - (e) Labeling Theory
7. **Islamic perspective on deviance and crime**

(b) BIOLOGICAL THEORIES OF CRIME

INTRODUCTION

Biological theories of crime are based on biological positivism which means that criminals are born criminals and *scientifically verifiable biological features* determine criminal behaviour. During the late 19th century, the scientific method was beginning to take hold in Europe. Rather than relying on pure thought and reason, scientists began to use careful observation and analysis of natural phenomena in their experiments. This movement inspired new discoveries in biology, astronomy, and chemistry. Charles Darwin's discoveries on the evolution of man encouraged a 19th-century "cult of science." Darwin's discoveries encouraged other scholars to be certain that all human activity could be verified by scientific principles. If the scientific method could be applied to the study of the natural world, then why not use it to study human behaviour and criminal behaviour in particular?

POSITIVISM AND USE OF SCIENTIFIC METHOD

Auguste Comte, considered the founder of sociology, applied scientific methods to the study of society. According to Comte, societies pass through stages that can be grouped on the basis of how people try to understand the world in which they live. People in primitive societies considered inanimate objects as having life (for example, the sun as a god); in later social stages, people embrace a rational, scientific view of the world. Comte called this final stage the positive stage, and those who followed his writings became known as positivists. As we understand it today, positivism has two main elements:

- All true knowledge is acquired through direct observation and not through conjecture or belief. According to positivism, statements that cannot be backed up by direct observation are invalid and worthless.
- The scientific method must be used if research findings are to be considered valid. The scientific method involves using such steps as identifying problems, collecting data, forming hypotheses, conducting experiments, and interpreting results and drawing conclusion.

According to the positivist tradition, social processes are a product of the measurable interaction between relationships and events. Human behaviour therefore is a function of a variety of forces. Some are social, such as the effect of wealth and class; others are political and historical, such as war and famine. Other forces are more personal and psychological, such as an individual's brain structure and his or her biological makeup or mental ability. Each of these influences and shapes human behaviour. People are neither born "good" nor "bad," and are neither "saints" nor "sinners." They are a product of their social and psychological traits, influenced by their upbringing and environment.

EARLY APPLICATION OF BIOLOGICAL POSITIVISM

Some of the initial *scientific* studies applying the positivist model to criminology were conducted by physiognomists, such as J. K. Lavater, who studied the facial features of criminals to determine whether the shape of ears, nose, and eyes and the distance between them were associated with antisocial behaviour. Phrenologists, such as Franz Joseph Gall and Johann K. Spurzheim, studied the shape of the skull and bumps on the head to determine whether these physical attributes were linked to criminal behaviour. Phrenologists believed that external cranial characteristics dictate which areas of the brain control physical activity. The brain, they suggested, has 30 different areas or faculties that control behaviour. The size of a brain could be determined by inspecting the contours of the skull – the larger the organ, the more active it was. The relative size of brain organs could be increased or decreased through exercise and self-discipline. Though phrenology techniques and methods are no longer practised or taken seriously, these efforts were an early attempt to use a "scientific" method to study crime.

By the early 19th century, abnormality in the human mind was being linked to criminal behaviour patterns. Philippe Pinel, one of the founders of French psychiatry, claimed that some people behave abnormally even without being mentally ill. He coined the phrase manie sans delire to denote what today is referred to as a psychopathic personality. In 1812, an American, Benjamin Rush, described patients with an "innate preternatural moral depravity." Another early criminological pioneer, English physician Henry Maudsley, believed that insanity and criminal behaviour were strongly linked. He stated: *"Crime is a sort of outlet in which their unsound tendencies are discharged; they would go mad if they were not criminals, and they do not go mad because they are criminals."* These early research efforts shifted attention to brain functioning and personality as the keys to criminal behaviour. When Sigmund Freud's work on the unconscious gained worldwide notoriety, the psychological basis of behaviour was forever established.

CESARE LOMBROSO

In Italy, Cesare Lombroso, a physician who served much of his career in the Italian army, was studying the cadavers of executed criminals in an effort to scientifically determine whether law violators were physically different from people of conventional values and behaviour. Lombroso believed that serious offenders – those who engaged in repeated assault- or theft-related activities – were "born criminals" who had inherited a set of primitive physical traits that he referred to as atavistic anomalies. Physically, born criminals were throwbacks to more primitive savage people. Among the crime-producing traits, Lombroso identified, were enormous jaws and strong canine teeth common to carnivores and savages who devour raw flesh. These criminogenic traits can be acquired through indirect heredity, from a degenerate family whose members suffered from such ills as insanity, syphilis, and alcoholism, or direct heredity—being the offspring of criminal parents.

Lombroso attracted a circle of followers who expanded on his vision of biological determinism and helped stimulate interest in what is referred to as criminal anthropology.

Lombroso was not alone in his views on the biological basis of crime. A contemporary, Raffaele Garofalo, shared the belief that certain physical characteristics indicate a criminal nature. Enrico Ferri added a social dimension to Lombroso's work and argued that criminals should not be held personally or morally responsible for their actions because forces outside their control caused criminality.

THE INHERITANCE SCHOOL

Advocates of the inheritance school, such as Henry Goddard, Richard Dugdale, and Arthur Estabrook, traced several generations of crime-prone families (referred to by pseudonyms such as the "Jukes" and the "Kallikaks"), finding evidence that criminal tendencies were based on genetics. Their conclusion: traits deemed socially inferior could be passed down from generation to generation through inheritance. Modern scholars point out that these families lived in severe poverty so that social rather than biological factors may have been at the root of their problems.

Body Type or Somatotype Theory

The body build or somatotype school, developed by William Sheldon, held that criminals manifest distinct physiques that make them susceptible to particular types of antisocial behaviour. Three types of body builds were identified:

- **Mesomorphs** have well-developed muscles and an athletic appearance. They are active, aggressive, sometimes violent, and the most likely to become criminals.
- **Endomorphs** have heavy builds and are slow moving. They are known for lethargic behaviour, rendering them unlikely to commit violent crime and more willing to engage in less strenuous criminal activities such as fencing stolen property.
- **Ectomorphs** are tall, thin, and less social and more intellectual than the other types. These types are the least likely to commit crime.

Sheldon recognized that pure types are rare and that most people have elements of all three types. He identified a Dionysian temperament, a person who has an excess of mesomorphy with a deficiency in ectomorphic restraint, thereby rendering them impulsive and into self-gratification, a condition that would produce crime.

But research have found out that most criminals have normal body type and normal facial features. Most of the prisoners in jails of the United States, European countries and Asia are with normal physique. Moreover, what about the Chinese, Japanese, South and North Korean criminals? They are mostly normal and small heighted and but these nations also have crime rate as the other nations have.

Extra Y Chromosome Theory

This theory says that extra Y chromosome in some males leads to criminal behaviour. There might be some criminals who have extra Y chromosome. However, it has been found through research that most criminals have the normal "XY" chromosome combination. So, they are not different from those who do not commit crime. Therefore, this could not be the reason. Similarly, most men with

"XYY" combination do not commit crime. Hence, having an extra "Y" does not necessarily lead to a person to criminal activity. Furthermore, no woman have this combination of genes, so there should be no women criminals. But that is not true. Such an explanation based on "XYY" chromosome combination is not acceptable.

CRITICAL ANALYSIS AND LIMITATIONS OF BIOLOGICAL THEORY

(a) Biological Determinism is Historical Curiosity, Not Scientific Fact

The work of Lombroso and his contemporaries is regarded today as a historical curiosity, not scientific fact. Strict biological determinism is no longer taken seriously (later in his career even Lombroso recognized that not all criminals were biological throwbacks). Early biological determinism has been discredited because it is methodologically flawed; most studies did not use control groups from the general population to compare results, a violation of the scientific method. Many of the traits assumed to be inherited are not really genetically determined but could be caused by deprivation in surroundings and diet. Even if most criminals shared some biological traits, they might be products not of heredity but of some environmental condition, such as poor nutrition or health care. Unusual appearance, and not behaviour, may have prompted people to be labelled and punished by the justice system.

(b) The Biosocial Theory

Owing to the limitations discussed above, the validity of a purely biological/psychological explanation of criminality became questionable and is no longer considered valid. Today, criminologists believe that environmental conditions interact with human traits and conditions to influence behaviour. Hence, the term biosocial theory has been coined to reflect the assumed link between physical and mental traits, the social environment, and behaviour.

(c) Contemporary Trait Theories

Trait theorists today do not suggest that a single biological or psychological attribute is thought to adequately explain all criminality. Rather, each offender is considered unique, physically and mentally; consequently, there must be different explanations for each person's behaviour. Some may have inherited criminal tendencies, others may be suffering from nervous system (neurological) problems, and still others may have a blood chemistry disorder that heightens their antisocial activity. Criminologists who focus on the individual see many explanations for crime, because, in fact, there are many differences among criminal offenders.

(c) Environment, Traits, and Crime

Even the most committed trait theorists recognize that environmental conditions in disadvantaged inner-city areas may have a powerful influence on antisocial behaviour. Many people who reside in these areas experience poverty, racism, frustration, and anger, yet relatively few become delinquents and even fewer mature into adult criminals. Because not all humans are born with equal potential to learn and achieve (equi-potentiality), the combination of physical traits and the environment produces individual behaviour patterns.

In fact, what may appear to some as the effect of environment and socialization actually may be linked to genetically determined physical and/or mental traits. Psychologist Bernard Rimland, for one, argues that while childhood behaviour problems are commonly linked to poor environment, disrupted socialization, or inadequate parenting, they actually stem from an abnormal trait: neurological damage linked to diet and chemical contamination. In his 2008 book, *Dyslogic Syndrome*, Rimland disputes the notion that bad or ineffective parenting is to blame for troubled or disobedient children.

CONCLUSION

According to modern biological theorists like Rimland and others, it is personal traits and biological make-up in combination with the social environment that explains behavioural choices. As criminologists Anthony Walsh and Lee Ellis conclude: *"If there is one takeaway lesson from studying biological bases of behaviour, it is that the more we study them the more we realize how important the environment is."*

(c) Psychological Theories of Crime

INTRODUCTION

The psychological branch of trait theories focuses on the psychological aspects of crime, including the associations among intelligence, personality, learning, and criminal behaviour. Some psychologists view antisocial behaviour from a psychoanalytic or psychodynamic perspective: their focus is on early childhood experience and its effect on personality. In contrast, behaviourism stresses social learning and behaviour modelling as the keys to criminality. Cognitive theory analyzes human perception and how it affects behaviour.

1. Psychodynamic Theory

Psychodynamic (or psychoanalytic) psychology was originated by Viennese psychiatrist Sigmund Freud (1856–1939) and has since remained a prominent segment of psychological theory. Freud believed that we all carry with us residue of the most significant emotional attachments of our childhood, which then guide future interpersonal relationships. Today the term psychodynamic refers to a broad range of theories that focus on the influence of instinctive drives and forces and the importance of developmental processes in shaping personality. Contemporary psychodynamic theory places greater emphasis on conscious experience and its interaction with the unconscious, in addition to the role that social factors play in development. Nonetheless, it still focuses on the influence of early childhood experiences on the development of personality, motivation, and drives.

2. Elements of Psychodynamic Theory

According to the classic version of the theory, the human personality contains a three-part structure: id, ego and super ego.

"ID"

The **id** is the primitive part of an individual's mental make-up present at birth. It represents unconscious biological drives for food, sleep, sex, and other life-sustaining necessities. The id follows the **pleasure principle**: it requires instant gratification without concern for the rights of others. The pleasure principle is often paramount when discussing criminal behaviour.

"EGO"

The ego develops early in life, when a child begins to learn that his or her wishes cannot be instantly gratified. The ego is that part of the personality that compensates for the demands of the id by helping the individual guide his or her actions to remain within the boundaries of social convention. The ego is guided by the reality principle: it takes into account what is practical and conventional by societal standards.

"SUPEREGO"

The superego develops as a result of incorporating within the personality the moral standards and values of parents, community, and significant others. It is the moral aspect of an individual's personality; it passes judgments on behaviour. The superego is divided into two parts: conscience and ego ideal. The Conscience tells what is right and wrong. It forces the ego to control the id and directs the individual into morally acceptable and responsible behaviours, which may not be pleasurable.

UNDERDEVELOPED SUPEREGO MAY LEAD TO CRIME

The focus of the superego is morality. The superego serves to pass judgment on the behaviour and actions of individuals. *The ego mediates between the id's desire for instant gratification and the strict morality of the superego.* One can assume people understand right from wrong. However, when a crime is committed, advocates of psychodynamic theory would suggest that an individual committed a crime because he or she has an underdeveloped superego.

WEAK EGOS RESULT IN CRIME

The psychodynamic model of the criminal offender depicts an aggressive, frustrated person dominated by events that occurred early in childhood. Perhaps because they may have suffered unhappy experiences in childhood or had families that could not provide proper love and care, criminals suffer from weak or damaged egos that make them unable to cope with conventional society. Weak egos are associated with immaturity, poor social skills, and excessive dependence on others. People with weak egos may be easily led into crime by antisocial peers and drug abuse. Some offenders have underdeveloped superegos and consequently lack internalized representations of those behaviours that are punished in conventional society. They commit crimes because they have difficulty understanding the consequences of their actions.

PARTS OF BRAIN ACCORDING TO FREUD

Sigmund Freud said that human brain consists of three parts: *conscious*, *subconscious* and the *unconscious*. He said the conscious is what we know about us and the world. He compared the *conscious* with the tip of an iceberg. The *subconscious* is that part of brain which is under our partial control. And humans have no control over their *unconscious*. The inner conflicts of an individual are stored in the unconscious. And according to Freud, it is the unconscious which determines overall human behaviour in general and criminal behaviour in particular.

In sum, Freud's psychodynamic theory suggests that criminal offenders are frustrated and aggravated. They are constantly drawn to past events that occurred in their early childhood. Because of a negligent, unhappy, or miserable childhood, which is most often characterized by a lack of love and/or nurturing, a criminal offender has a weak (or absent) ego. Most important, research suggests that having a weak ego is linked with poor or absence of social etiquette, immaturity, and dependence on others. Research further suggests that individuals with weak egos may be more likely to engage in drug abuse.

AUGUST AICHORN'S PSYCHOANALYTICAL THEORY

The psychoanalyst whose work is most closely associated with criminality is August Aichorn. After examining many delinquent youths, Aichorn concluded that societal stress, though damaging, could not alone result in a life of crime unless a predisposition existed that psychologically prepared youths for antisocial acts. This mental state, which he labelled latent delinquency, is found in youngsters whose personality requires them to act in these ways:

- Seek immediate gratification (to act impulsively)
- Consider satisfying their personal needs more important than relating to others
- Satisfy instinctive urges without considering right and wrong (that is, they lack guilt)

MENTAL OR MOOD DISORDERS AND CRIME

Within the psychodynamic theory of crime are mood disorders. Criminal offenders may have a number of mood disorders that are ultimately manifested as depression, rage, narcissism, and social isolation. One example of a disorder found in children is conduct disorder. Children with conduct disorder have difficulty following rules and behaving in socially acceptable ways. Conduct disorders are ultimately manifested as a group of behavioural and emotional problems in young adults. It is important to note that children diagnosed with conduct disorder are viewed by adults, other children, and agencies of the state as "trouble," "bad," "delinquent," or even "mentally ill." It is important to inquire as to why some children develop conduct disorder and others do not. There are many possible explanations; some of the most prominent include child abuse, brain damage, genetics, poor school performance, and a traumatic event.

Children with conduct disorder are more likely to exhibit aggressive behaviours toward others, and they may be cruel to animals. Other manifestations include bullying; intimidation; fear; initiating fights; and using a weapon, such as a gun, a knife, a box cutter, rocks, a broken bottle.

Adolescents with conduct disorder could also force someone into unwanted sexual activity. Property damage may also be a concern; one may observe these children starting fires with the ultimate intent to destruct property or even kill someone. Other unacceptable behaviours associated with conduct disorder include lying and stealing, breaking into an individual's house or an unoccupied building or car, lying to obtain desirable goods, avoiding obligations, and taking possessions from individuals or stores. Last, children with conduct disorder are more likely to violate curfews despite their parents' desires. These children also are more likely to run away from home and to be late for or truant from school. There is no question that children who exhibit the above mentioned behaviours must receive a medical and psychological examination. It is important to note that many children with conduct disorder could very well have another existing condition, such as anxiety, post-traumatic stress disorder, drug or alcohol abuse, or attention deficit disorder.

It is important to recognize that children with conduct disorder are likely to have continuing, long-lasting problems if they do not receive treatment at the earliest onset. Without treatment, these children will not be able to become accustomed to the demands of adulthood and will continue to have problems and issues with a variety of relationships and even with finding and maintaining a job or occupation. Treatment of children with conduct disorder is often considered complex and exigent. It is rarely brief, because establishing new attitudes and behaviour patterns takes time.

As mentioned previously, early treatment offers a child a greater probability for improvement and for ultimately living a productive and successful life. An important component for the medical doctor or psychological clinician to consider is convincing the child to develop a good attitude, learn to cooperate, trust others, and eliminate fear in their lives. Behaviour therapy and psychotherapy may be necessary to help the child learn how to control and express anger.

MENTAL ILLNESS AND CRIME

The most serious forms of personality disturbance will result in mental disorders. The most serious mental disturbances are referred to as psychoses. Examples of mental health disorders include bipolar disorder and schizophrenia. Bipolar disorder is marked by extreme highs and lows; the person alternates between excited, assertive, and loud behaviour and lethargic, listless, and melancholic behaviour. A second mental health disturbance is schizophrenia. Schizophrenic individuals often exhibit illogical and incoherent thought processes, and they often lack insight into their behaviour and do not understand reality. A person with paranoid schizophrenia also experiences complex behaviour delusions that involve wrongdoing or persecution.

Individuals with paranoid schizophrenia often believe everyone is out to get them. It is important to note that research shows that female offenders appear to have a higher probability of serious mental health symptoms than male offenders. These include symptoms of schizophrenia, paranoia, and obsessive behaviours.

I. BEHAVIOURAL THEORY

The Behavioural Theory maintains that human behaviour is developed through learning experiences. The hallmark of behavioural theory is the notion that people alter or change their behaviour according to the reactions this behaviour elicits in other people.

Gabriel Tarde is the forerunner of modern day learning theorists. Tarde believed people learn from one another through a process of imitation. Tarde's ideas are similar to modern social learning theorists who believe that both interpersonal and observed behaviour, such as a movie or television, can influence criminality.

Behavioural Theory of B. F. Skinner

According to B. F. Skinner, in an ideal situation, behaviour is supported by rewards and extinguished by negative reactions or punishments. Behaviourists view crimes as learned responses to life's situations. Rewarded behaviour has chances of repetition and punished behaviour has chances of reduction. If a thief commits crime and steals something and utilizes the stolen things and does not get caught, his chances of repeating that criminal behaviour will increase. If a thief gets caught and gets punished for his criminal act, it may decrease his chances of repeating that criminal behaviour.

Social Learning Theory by Albert Bandura

Social learning theory, which is a branch of behaviour theory, is the most relevant to criminology. The most prominent social learning theorist is Albert Bandura. Bandura maintains that individuals are not born with an innate ability to act violently. He suggested that, in contrast, violence and aggression are learned through a process of *behaviour modelling*. In other words, children learn violence through *observation* of others. Aggressive acts are modelled after three primary sources:

- family interaction
- environmental experiences
- the mass media

Social Learning and Violence

Social learning theorists view violence as something learned through a process called *behaviour modelling*. In modern society, aggressive acts are usually modelled after three principal sources:

(a) **Family interaction.** Studies of family life show that aggressive children have parents who use similar tactics when dealing with others. For example, the children of wife batterers are more likely to use aggressive tactics themselves than children in the general population, especially if the victims (their mothers) suffer psychological distress from the abuse.

(b) **Environmental experiences.** People who reside in areas in which violence is a daily occurrence are more likely to act violently than those who dwell in low-crime areas whose norms stress conventional behaviour.

(c) **Mass media.** Films and television shows commonly depict violence graphically. Moreover, violence is often portrayed as an acceptable behaviour, especially for heroes who never have to face legal consequences for their actions.

In Pakistan's context programmes related to crime like *Shabbir to Dekhay Ga*, *Sar-i-Aam*, *Jurm Bolta Hai* and other Enactments, and Indian Programs like *Crime Patrol* and *CID* also expose children to the world of crime. Through these programmes, the children watch what they should not watch while they are young and immature.

Substantiating the relationship between the media and violence is the fact that many studies suggest that media violence enables or allows aggressive children or adolescents to justify or rationalize their behaviour. Furthermore, consistent media violence desensitizes children and adolescents.

In summary, social learning theorists have said that the following four factors may contribute to violent and/or aggressive behaviour:

(a) **An event that heightens arousal:** Such as a person frustrating or provoking another through physical assault or verbal abuse.

(b) **Aggressive skills:** Learned aggressive responses picked up from observing others, either personally or through the media.

(c) **Expected outcomes:** The belief that aggression will somehow be rewarded. Rewards can come in the form of reducing tension or anger, gaining some financial reward, building self-esteem, or gaining the praise of others.

(d) **Consistency of behaviour with values:** The belief, gained from observing others, that aggression is justified and appropriate, given the circumstances of the current situation.

II. COGNITIVE THEORY

One area of psychology that has received increasing recognition in recent years has been the cognitive school. Psychologists with a cognitive perspective focus on mental processes and how people perceive and mentally represent the world around them and solve problems. The pioneers of this school were Wilhelm Wundt, Edward Titchener, and William James. Today, there are several sub-disciplines within the cognitive area. The moral development branch is concerned with the way people morally represent and reason about the world. Humanistic psychology stresses self-awareness and "getting in touch with feelings." The information processing branch focuses on the way people process, store, encode, retrieve, and manipulate information to make decisions and solve problems.

III. INTELLIGENCE THEORY

Criminologists have suggested for centuries that there exists a link between intelligence and crime. Some common beliefs are that criminals and delinquents possess low intelligence and that this low intelligence causes criminality. The ideology or concept of IQ and crime has crystallized into the nature-versus-nurture debate. The nature-versus-nurture debate is a psychological argument that is related to whether the environment or heredity impacts the psychological development of individuals.

Science recognizes that we share our parents' DNA. To illustrate, some people have short fingers like their mother and brown eyes like their father. However, the question remains: Where do individuals get their love of sports, literature, and humour? The nature-versus-nurture debate addresses this issue. With respect to the nature side, research on the prison population has consistently shown that inmates typically score low on IQ tests. In the early decades of the 20th century, researchers administered IQ tests to delinquent male children. The results indicated that close to 40% had below average intelligence. On the basis of these data and other studies, some scholars argue that the role of nature is prevalent. However, can researchers assume a priori that heredity determines IQ, which in turn influences an individual's criminal behaviour?

The argument is that a child with a low IQ will perform poorly in school. In turn, this school failure is followed by dropping out. Given the poor school performance, a child is left with very few options. This ultimately leads to delinquency and adult criminality. Support of this position has been widespread. Furthermore, it is important to note that US prisons and jails are highly populated with inmates who only have an average of eighth-grade education. At the same time, these same inmates at the time of their offence were unemployed.

It's possible that criminals with high IQ are better able to avoid detection and punishment than low IQ people. Research using data from arrestees may omit the more intelligent members of the criminal subclass. And even if they are caught, high IQ offenders are less likely to be convicted and punished. Because their favourable treatment helps higher IQ offenders avoid the pains of criminal punishment, it lessens their chances of recidivism or re-offending.

Even if it can be shown that known offenders have lower IQs than the general population, it is difficult to explain many patterns in the crime rate. Why are there more male than female criminals? (Are females smarter than males?) Why do crime rates vary by region, time of year, and even weather patterns? Why does aging out occur? IQs do not increase with age, so why should crime rates fall?

One criticism of this perspective is the failure to account for free will. Many individuals in our society believe in the ability to make choices. Last, there are many individuals who have a low IQ but refrain from committing crime.

To demonstrate, parents are a major influence on their children's behaviour. At an early age, parents read books; play music; and engage their children in art, museum, and sporting events. Some parents spend no quality time with their children, and these children are believed to perform poorly on intelligence test. Other groups important in a child's nurturing are friends, relatives, and teachers. Ultimately, the child who has no friends or relatives and drops out of school is destined for difficult times. Research has demonstrated that the more education a person has, the higher his or her IQ.

IV. PSYCHOPATHY

Some violent offenders may have a disturbed character structure commonly referred to as psychopathy, sociopathy, or antisocial personality. Although they may exhibit superficial charm and above-average intelligence, this often masks a disturbed personality that makes them incapable of forming enduring relationships with others and continually involves them in such deviant behaviours as violence, risk taking, substance abuse, and impulsivity.

From an early age, many psychopaths have had home lives that were filled with frustration, bitterness, and quarrelling. Antisocial youths exhibit low levels of guilt and anxiety and persistently violate the rights of others. Their intelligence may alter their criminal career development, and render it quite different from that of non-psychopathic criminals; high intelligence appears to enhance the destructive potential of a psychopath, while intelligence may mediate the criminality of the non-psychopath.

As a result of this instability and frustration, these individuals developed personalities th became unreliable, unstable, demanding, and egocentric. Most psychopaths are risk taking, sensatio seekers who are constantly involved in a garden-variety of antisocial behaviours. Some may becom almost addicted to thrill seeking, resulting in repeated and dangerous risky behaviours. They are ofte described as grandiose, egocentric, manipulative, forceful, and cold-hearted, with shallow emotion and the inability to feel remorse, empathy with others, or anxiety over their misdeeds. When the commit antisocial acts, they are less likely to feel shame or empathize with their victims.

Hervey Cleckley, a leading authority on psychopathy, described them as follows:

> *Psychopaths are chronically antisocial individuals who are always in trouble, profiting neither from experience nor punishment, and maintaining no real loyalties to any person, group, or code. They are frequently callous and hedonistic, showing marked emotional immaturity, with lack of responsibility, lack of judgment and an ability to rationalize their behavior so that it appears warranted, reasonable and justified.*

Considering these personality traits, it is not surprising that research studies show that peop evaluated as psychopaths are significantly more prone to criminal and violent behaviour whe compared to non-psychopathic control groups. Psychopaths tend to continue their criminal caree long after other offenders burn out or age out of crime. They are continually in trouble with the la and, therefore, are likely to wind up in penal institutions.

THE CAUSES OF PSYCHOPATHY

Though psychologists are still not certain of the cause of psychopathy, a number of factors a believed to contribute to its development.

Traumatic Socialization: Some explanations focus on family experiences, suggesting that t influence of an unstable parent, parental rejection, lack of love during childhood, and inconsiste discipline may be related to psychopathy. Children who lack the opportunity to form an attachment a mother figure in the first three years of life, who suffer sudden separation from the mother figure, who see changes in the mother figure are most likely to develop psychopathic personalities. Accordi to this view, the path runs from antisocial parenting to psychopathy to criminality. Psychologist Dav Lykken suggests that psychopaths have an inherited "low fear quotient," which inhibits their fear punishment. All people have a natural or innate fear of certain stimuli, such as spiders, snakes, fir or strangers. Psychopaths, as a rule, have few fears. Normal socialization processes depend punishing antisocial behaviour to inhibit future transgressions. Someone who does not f punishment is simply harder to socialize.

Neurological Disorder: Psychopaths may suffer from lower than normal levels of arous Research studies show that psychopaths have lower skin conductance levels and fewer spontane responses than normal subjects. There may be a link between psychopathy and autonomic nerv system (ANS) dysfunction. The ANS mediates physiological activities associated with emotions is manifested in such measurements as heartbeat rate, blood pressure, respiration, muscle tensi capillary size, and electrical activity of the skin (called galvanic skin resistance). Psychopaths may less capable of regulating their activities than other people. While some people may become anxi and afraid when facing the prospect of committing a criminal act, psychopaths in the s circumstances feel no such fear. James Ogloff and Stephen Wong conclude that their reduced anxi levels result in behaviours that are more impulsive and inappropriate and in deviant behavi apprehension, and incarceration.

Brain Structure: Another view is that psychopathy is related to abnormal brain structu Consequently, psychopaths may need greater than average stimulation to bring them up comfortable levels (similar to arousal theory, discussed earlier).

Another view is that psychopathy is bound up in an impairment of the amygdala, that part of the brain that plays a crucial role in processing emotions. As James Blair and his colleagues suggest, amygdala dysfunction gives rise to impairments in aversive conditioning, instrumental learning, and the processing of fearful and sad expressions. These impairments interfere with socialization; people with impaired amygdalea do not learn to avoid actions that cause harm to other individuals. Because of this deficiency, psychopaths have problems distinguishing and processing people's facial expressions. When Quentin Deeley and his colleagues compared facial recognition ability of psychopaths with a control group, they found that the former were significantly less likely to recognize and emotionally respond to facial and other signals of distress. This inability may help explain the lack of emotional empathy observed among people with antisocial personalities.

The terms psychopath and sociopath are commonly used to describe people who have an antisocial personality. People with these traits have been involved in some of the most notorious and violent crimes.

Chronic Offending: The antisocial personality concept seems to jibe with what is known about chronic offending. As many as 80% of these high-end chronic offenders exhibit sociopathic behaviour patterns. Though comprising about 4% of the total male population and less than 1% of the total female population, they are responsible for half of all serious felony offences committed annually. Not all high-rate chronic offenders are sociopaths, but enough are to support a strong link between personality dysfunction and long-term criminal careers.

Though these terms are often used interchangeably, some psychologists distinguish between sociopaths and psychopaths, suggesting that the former are a product of a destructive home environment whereas the latter are a product of an inherited genetic defect.

CONCLUSION

The relationship between psychology and criminal behaviour is significant. For centuries, scholars have been attempting to explain why someone commits a crime. The psychological perspective first examined the role of psychodynamic theory as developed by Sigmund Freud. Included here are the roles of the id, ego, and superego in criminal behaviour. Bipolar disorder and schizophrenia are two of the most serious disorders. Research suggests that there is a correlation between individuals with bipolar disorder and schizophrenia and delinquency and/or criminal behaviour. The second major psychological theory is behaviourism. As previously mentioned, behavioural theory suggests human behaviour is fostered through learning experiences. At the forefront of this theory is the premise that individuals change their behaviour according to reactions from others. In the real world, there exists the assumption that behaviour is reinforced via rewards and eliminated by a negative reaction or punishment. Social learning theory, which is a branch of behaviour theory, is the most relevant to criminology.

The intelligence debate has existed for centuries, and data demonstrate that individuals with a low IQ are more likely to engage in criminal behaviour. Important to the discussion of intelligence and IQ is school performance. Research studies that have examined future delinquency and adult criminality have consistently demonstrated the link between the two. In reality, it is not difficult to understand why a person who fails or drops out of school is limited in his or her career or future options. Occupations that have desirable salaries often require a high school degree as well as a bachelor's or master's degree. In sum, when citizens and scholars attempt to understand why people commit a crime, recognition must be given to psychological theories. Not doing so would be a serious error in judgment.

QUESTION 5

SOCIOLOGICAL OR SOCIAL THEORIES OF CRIME

Q. Travis Hirschi argued that crime results when an individual's bond to society is weak or broken. Discuss in detail what this theory of social bonding explains about crime. (CSS-2019)

Q. Discuss the fundamental postulates of Edwin Sutherland's 'Differential Association Theory' with examples. (CSS-2019)

Q. Strain Theory maintains that pressure of cultural goals and the unavailability of legal and established means to achieve those goals like wealth, authority, and education lead people to engage in illegal behaviour to achieve those goals. Discuss.

Q. It is not the social structure that leads people to become career criminals rather it is the social process and people's social reaction such as criminal labelling which leads people to engage in crime. Explain it with reference to labelling theory of crime.

Q. Social Disorganization Theory says that socially disorganized areas, with poverty, cultural conflict and weak rule of law have more chances of criminals and gangsters. Discuss it with reference to examples from Pakistani society.

ANSWER

INTRODUCTION

The Sociological Perspective about crime lays emphasis on the role social factors play in criminal behaviour. According to the social theorists, society has the strongest influence on people's behaviour in general and criminal behaviour in particular. Factors like poverty, illiteracy, unemployment, criminal families, criminal peers and gang-ridden social surroundings play very important role in production of criminals. Social reaction of others toward a criminal may also affect his or her self-image and may lead him to adopt the criminal career. On the other hand, institutions of social control like family, school, masjid, police and courts may prevent some from committing crime and are also mandated to punish those who have violated the laws made by the society.

THE DEVELOPMENT OF THE SOCIOLOGICAL PERSPECTIVE

At the same time that biological positivists were conducting their experiments, others were using social data to scientifically study the major changes that were taking place in 19th century society and in so doing helping to create the field of sociology.

Sociological Perspective seemed an ideal perspective from which to study society. After thousands of years of stability, the world was undergoing a population explosion: the population estimated at 600 million in 1700 had risen to 900 million by 1800. People were flocking to cities in ever-increasing numbers. Manchester, England, had 12,000 inhabitants in 1760 and 400,000 in 1850; during the same period, the population of Glasgow, Scotland, rose from 30,000 to 300,000.

The development of machinery such as power looms had doomed cottage industries and given rise to a factory system in which large numbers of people toiled for extremely low wages. The spread of agricultural machines increased the food supply while reducing the need for a large rural workforce; these excess labourers further swelled city populations. At the same time, political, religious, and social traditions continued to be challenged by the scientific method.

ROLE OF QUETELET AND DURKHEIM

The application of sociological concepts to criminology can be traced to the works of pioneering sociologists Quetelet and Durkheim. Quetelet instigated the use of data and statistics in performing criminological research. Durkheim, considered one of the founders of sociology, defined crime as a normal and necessary social event. These two perspectives have been extremely influential on modern criminology.

Quetelet was a Belgian mathematician who began (along with a Frenchman, André-Michel Guerry) what is known as the cartographic school of criminology. This approach made use of social statistics that were being developed in Europe in the early 19th century. Statistical data provided important demographic information on the population, including density, gender, religious affiliations, and wealth.

Quetelet studied data gathered in France (called the Comptes generaux de l'administration de la justice) to investigate the influence of social factors on the propensity to commit crime. In addition to finding a strong influence of age and sex on crime, Quetelet also uncovered evidence that season, climate, population composition, and poverty were related to criminality. More specifically, he found that crime rates were greatest in the summer, in southern areas, among heterogeneous populations, and among the poor and uneducated. He also found crime rates to be influenced by drinking habits. Quetelet identified many of the relationships between crime and social phenomena that still serve as a basis for criminology today. His findings that crime had a social basis was a direct challenge to Lombrosian biological determinism.

CRIME AS PART OF HUMAN NATURE

According to Émile Durkheim's vision of social positivism, crime is part of human nature because it has existed during periods of both poverty and prosperity. Crime is normal because it is virtually impossible to imagine a society in which criminal behaviour is totally absent. Such a society would almost demand that all people be and act exactly alike. Durkheim believed that the inevitability of crime is linked to the differences (heterogeneity) within society. Since people are so different from one another and employ such a variety of methods and forms of behaviour to meet their needs, it is not surprising that some will resort to criminality. Even if "real" crimes were eliminated, human weaknesses and petty vices would be elevated to the status of crimes. As long as human differences exist, then, crime is inevitable and one of the fundamental conditions of social life.

Durkheim argued that crime can even be useful and, on occasion, healthy for society. He held that the existence of crime paves the way for social change and indicates that the social structure is not rigid or inflexible. Put another way, if such differences did not exist, it would mean that everyone behaved the same way and agreed on what is right and wrong. Such universal conformity would stifle creativity and independent thinking. To illustrate this concept, Durkheim offered the example of the Greek philosopher Socrates, who was considered a criminal and put to death for corrupting the morals of youth simply because he expressed ideas that were different from what people believed at that time.

Durkheim reasoned that another benefit of crime is that it calls attention to social ills. A rising crime rate can signal the need for social change and promote a variety of programmes designed to relieve the human suffering that may have caused crime in the first place. In his influential book, The *Division of Labour in Society*, Durkheim described the consequences of the shift from a small, rural society, which he labelled "mechanical," to the more modern "organic" society with a large urban population, division of labour, and personal isolation. From this shift flowed anomie, or norm and role confusion, a powerful sociological concept that helps describe the chaos and disarray accompanying the loss of traditional values in modern society. Durkheim's research on suicide indicated that anomic societies maintain high suicide rates; by implication, anomie might cause other forms of deviance as well.

THE CHICAGO SCHOOL

Social forces operating in urban areas create "natural areas" for crime. These urban neighbourhoods maintain such a high level of poverty that critical institutions of socialization and control, such as the school and the family, begin to break down. While normally these social institutions can apply the social control necessary to restrain the neighbourhood youth, their weakness means that kids are now free to engage in exciting and enticing law-violating behaviours. As crime rates soar and residents are afraid to leave their homes at night, the neighbourhood becomes socially disorganized – unable to apply social control on its residents. It can no longer muster the cohesion needed to protect its residents from crime, drug abuse, and violence. Criminal behaviour is not then a function of personal traits or choice, but is linked to environmental conditions that fail to provide residents with proper human relations and development.

The Chicago School sociologists initiated the view that crime and social ecological conditions were linked. Neighbourhood conditions, and not individual pathology, influence and shape the direction of crime rates. Their writings became the core of sociological criminology, and the social environment and its influence on human behaviour have remained the primary focus of criminology.

Their authority was such that most criminologists have been trained in sociology, and criminology courses are routinely taught in departments of sociology.

Lower-class areas are scenes of inadequate housing and health care, disrupted family lives, underemployment, and despair. Members of the lower class also suffer in other ways. They are more prone to depression, less likely to have achievement motivation, and less likely to put off immediate gratification for future gain. For example, they may be less willing to stay in school because the rewards for educational achievement are in the distant future.

The poor are constantly bombarded by the media with advertisements linking material possessions to self-worth, but they are often unable to attain desired goods and services through conventional means. Though they are members of a society that extols material success above any other, they are unable to satisfactorily compete for such success with members of the upper classes. As a result, they may turn to illegal solutions to their economic plight: they may deal drugs for profit, steal cars and sell them to "chop shops," or commit armed robberies for desperately needed funds. They may become so depressed that they take alcohol and drugs as a form of self-tranquillization, and because of their poverty, they may acquire the drugs and alcohol through illegal channels.

The problems caused by poverty and income inequality are not lost on criminologists. They recognize that the various sources of crime data show that crime rates are highest in neighbourhoods characterized by poverty and social disorder. Although members of the middle and upper classes sometimes engage in crime, these are generally nonviolent acts, such as embezzlement and fraud, which present little danger to the general public. In contrast, lower-class crime is often the violent, destructive product of youth gangs and marginally and underemployed young adults. The real crime problem is essentially a lower-class phenomenon, which breeds criminal behaviour that begins in youth and continues into young adulthood. Kids growing up poor and living in households that lack economic resources are much more likely to get involved in serious crime than their wealthier peers.

SOCIAL STRUCTURE THEORIES IN CRIMINOLOGY

To explain crime through social structure factors, criminologists have formulated social structure theories. As a group, they suggest that social and economic forces operating in deteriorated lower-class areas are the key determinant of criminal behaviour patterns. Social forces begin to affect people while they are relatively young and continue to influence them throughout their lives. Though not all youthful offenders become adult criminals, those who are exposed to a continual stream of violence in deteriorated inner-city neighbourhoods are the ones most likely to persist in their criminal careers.

Because crime rates are higher in lower-class urban centres than in middle-class suburbs, social forces must be operating in blighted urban areas that influence or control behaviour.

There are two independent yet overlapping branches within the social structure perspective – strain theory and social disorganization.

I. Social Disorganization Theory

INTRODUCTION

Social disorganization theory focuses on the conditions within the urban environment that affect crime rates. A disorganized area is one in which institutions of social control – such as the family, commercial establishments, and schools – have broken down and can no longer carry out their expected or stated functions. Indicators of social disorganization include high unemployment, school dropout rates, deteriorated housing, low-income levels, and large numbers of single-parent households. Residents in these areas experience conflict and despair, and, as a result, antisocial behaviour flourishes.

FOUNDATIONS OF SOCIAL DISORGANIZATION THEORY

Social disorganization theory was first popularized by the work of two Chicago sociologists, Clifford R. Shaw and Henry D. McKay, who linked life in disorganized, transitional urban areas to neighbourhood crime rates. Shaw and McKay began their pioneering work on crime in Chicago during the early 1920s while working as researchers for a state-supported social service agency.

Shaw and McKay began their analysis during a period in the city's history that was fairly typical of the transition that was taking place in many other urban areas. Chicago had experienced a mid-19th century population expansion, fuelled by a dramatic influx of foreign-born immigrants and, later, migrating southern families. Congregating in the central city, the newcomers occupied the oldest housing areas and therefore faced numerous health and environmental hazards.

Sections of the city started to physically deteriorate. This condition prompted the city's wealthy, established citizens to become concerned about the moral fabric of Chicago society. The belief was widespread that immigrants from Europe and the rural South were crime prone and morally dissolute. In fact, local groups were created with the very purpose of "saving" the children of poor families from moral decadence. It was popular to view crime as the property of inferior racial and ethnic groups.

CHARACTERISTICS OF SOCIALLY DISORGANIZED AREAS

(a) Destabilized and Disorganized Neighbourhood

Social disorganization theory links crime rates to neighbourhood ecological characteristics. Communities where the fabric of social life has become frayed and torn are unable to provide essential services to their residents, such as education, health care, and proper housing. Residents in these crime-ridden neighbourhoods want to flee the area at the earliest opportunity. Because they want out, they become uninterested in community matters. As a result, these neighbourhoods are destabilized. There is constant population turnover; people are not interested in investing in these communities. Soon streets are littered and untidy, housing becomes deteriorated, and the neighbourhood is rezoned for mixed-use (i.e. residential and commercial property exist side by side).

(b) Weak and Disorganized Social Control

Because the area is undergoing stress, the normal sources of social control common to most neighbourhoods – the family, school, neighbours, business owners, the church, law enforcement, and social service agencies – become ineffective, weak, and disorganized. Personal relationships are strained because neighbours are constantly relocating to better areas. Resident turnover further weakens communication and blocks the establishment of common goals. The result: any attempt at community-level problem solving ends in frustration.

(c) Gang Formation

Because social institutions are frayed or absent, law-violating youth groups and gangs form and are free to recruit neighbourhood youth. Both boys and girls who feel detached and alienated from their social world are at risk to become gang members. Liyari in Karachi and Rajanpur near Punjab-Sindh border area are places where notorious gangs formed.

(d) Transitional Neighbourhoods

Shaw and McKay explained crime and delinquency within the context of the changing urban environment and ecological development of the city. They saw that Chicago had developed into distinct neighbourhoods (natural areas), some affluent and others wracked by extreme poverty. These poverty-ridden, transitional neighbourhoods suffered high rates of population turnover and were incapable of inducing residents to remain and defend the neighbourhoods against criminal groups. Low rents in these areas attracted groups with different racial and ethnic backgrounds.

(e) Cultural Conflict

In transitional areas, successive changes in the population composition, disintegration of traditional cultures, diffusion of divergent cultural standards, and gradual industrialization of the area result in dissolution of neighbourhood culture and created cultural conflict. The continuity of conventional neighbourhood traditions and institutions is broken, leaving children feeling displaced and without a strong or definitive set of values. Same happened to Layari in Karachi where due to the above-discussed issues, the area had become socially disorganized.

(f) Lack of Collective or Neighbourhood Cohesiveness

Such areas also lack collective efficacy or social cohesiveness. In contrast, residents of socially disorganized neighbourhoods find that efforts at social control are weak and attenuated. People living in economically disadvantaged areas are significantly more likely to perceive their immediate surroundings in more negative terms than those living in areas that maintain collective efficacy. When community social control efforts are blunted, crime rates increase, further weakening neighbourhood cohesiveness.

(g) Concentric Zones

Shaw and McKay identified the areas in Chicago that had excessive crime rates. The areas of heaviest concentration of crime appeared to be the transitional inner-city zones, where large numbers of foreign-born citizens had recently settled. The zones furthest from the city's centre had correspondingly lower crime rates.

CRITICAL ANALYSIS OF SOCIAL DISORGANIZATION THEORY

1. Despite some shortcomings to explain the types of crime which happen due to other factors like labelling, the criminal company, the most important elements of social disorganization theory findings still hold up.
2. Crime rates are sensitive to the destructive social forces operating in lower-class urban neighbourhoods.
3. Environmental factors, rather than individual differences, are the root cause of crime. Personal abnormality or inferiority has little to do with crime rates.
4. Crime is a constant fixture in poverty areas regardless of racial or ethnic make-up.
5. Neighbourhood disintegration and the corresponding erosion of social control are the primary causes of criminal behaviour; community values, norms, and cohesiveness affect individual behaviour choices.

The relationship between ecology and crime rates, therefore, may reflect police behaviour more than criminal behaviour. These criticisms aside, the concept of social disorganization provides a valuable contribution to our understanding of the causes of criminal behaviour.

SOCIAL DISORGANIZATION THEORIES

Theory	Major Premise	Strengths	Research Focus
Shaw and McKay's concentric zones theory	Crime is a product of transitional neighbourhoods that manifest social disorganization and value conflict.	Identifies why crime rates are highest in slums area. Point out the factors that produce crime. Suggests programmes to help reduce crime.	Poverty; disorganization, gangs, neighbourhood changes; community context of crime.
Social ecology theory	The conflicts and problems of urban social life and communities, including fear, unemployment, deterioration and siege mentality, influence crime rates.	Accounts for urban crime rates and trends. Identifies community-level factors that produce high crime rates.	Social control; fear; collectively efficacy; unemployment.

Shaw and McKay's work resulted in the formal development of social disorganization theory as an explanation of the behaviour and characteristics of neighbourhoods and how changes in those characteristics could influence the level of crime. After this, social disorganization theory enjoyed a time of prominence in criminological thought, producing many replications and research through the early 1960s.

CONCLUSION

Social disorganization theory has its roots in some of the oldest research in criminological theory, dating back to the early 1800s. Studies of neighbourhoods, including crime characteristics, rose almost simultaneously with the development of the field of sociology. By introducing a new variable – the ecology of the city – to the study of crime, Shaw and McKay paved the way for a whole generation of criminologists to focus on the social influences of criminal and delinquent behaviour.

II. Strain Theory

INTRODUCTION

Part of the Social Perspective about crime, Strain Theory says that crime is a function of the conflict between the *goals* people have and the *means* they can use to obtain them legally. Most people desire wealth or material possessions, power or authority, prestige, educational qualification and beauty. And although these social and economic goals are common to people in all economic strata, strain theorists insist that the ability to obtain these goals is class dependent. Members of the lower class are unable to achieve these symbols of success through *conventional means*. Consequently, they feel anger, frustration, and resentment, which is referred to as *strain*. Lower-class citizens can either accept their condition and live out their days as socially responsible citizens, or they can choose an alternative means of achieving success, such as theft, violence, or drug trafficking.

WHAT IS STRAIN?

Strain means a severe or excessive demand on the strength, resources, or abilities of someone or something. Strain theorists believe that most people share similar values and goals. They want to earn money, have a nice home, drive a great car, and wear stylish clothes. They also want to care for their families and educate their children. Unfortunately, the ability to achieve these personal goals is stratified by socio-economic class. While the affluent may live out the American Dream, the poor are shut out from achieving their goals. Because they cannot always get what they want, they begin to feel *frustrated and angry*, a condition that is referred to as strain.

STRAIN AND CRIMINAL MOTIVATION

Strain is related to criminal motivation. People who feel economically and socially humiliated may perceive the right to humiliate others in return. Psychologists warn that under these circumstances those who consider themselves "losers" begin to fear and envy "winners" who are doing very well at their expense. If they fail to take risky aggressive tactics, they are surely going to lose out in social competition and have little chance of future success. These generalized feelings of relative deprivation are precursors to high crime rates.

SOCIAL INEQUALITY AND STRAIN

According to the strain view, sharp divisions between the rich and poor create an atmosphere of envy and mistrust that may lead to violence and aggression. People who feel deprived because of their race or economic class standing eventually develop a sense of injustice and discontent. The less fortunate begin to distrust the society that has nurtured social inequality and obstructed their chances of progressing by legitimate means. The constant frustration that results from these feelings of inadequacy produces pent-up aggression and hostility and, eventually, leads to violence and crime. The effect of inequality may be greatest when the impoverished population believes they are becoming less able to compete in a society where the balance of economic and social power is shifting further toward the already affluent. Under these conditions, the likelihood that the poor will choose illegitimate life-enhancing activities increases.

Strain theories come in two distinct formulations:

- **Structural strain:** Using a sociological lens, structural strain suggests that economic and social sources of strain shape collective human behaviour.
- **Individual strain:** Using a psychological reference, individual strain theories suggest that individual life experiences cause some people to suffer pain and misery, feelings that are then translated into antisocial behaviours.

THE CONCEPT OF ANOMIE

The roots of strain theories can be traced to Émile Durkheim's notion of anomie (from the Greek a *nomos*, "without norms"). According to Durkheim, an anomic society is one in which rules of behaviour (i.e. values, customs, and norms) have broken down or become inoperative during periods of rapid social change or social crisis such as war or famine. Anomie is most likely to occur in societies that are moving from a preindustrial society, which is held together by traditions, shared values, and unquestioned beliefs (i.e. mechanical solidarity) to a post-industrial social system, which is highly developed and dependent upon the division of labour.

In this modern society, people are connected by their interdependent needs for one another's services and production (i.e. organic solidarity). The shift in traditions and values creates social turmoil. Established norms begin to erode and lose meaning. If a division occurs between what the population expects and what the economic and productive forces of society can realistically deliver, a crisis situation develops that can manifest itself in normlessness or anomie.

Anomie undermines society's social control function. Every society works to limit people's goals and desires. If a society becomes anomic, it can no longer establish and maintain control over its population's wants and desires.

People find it difficult to control their appetites, their demands become unlimited. Under these circumstances, obedience to legal codes may be strained, and alternative behaviour choices, such as crimes, may be inevitable.

MERTON'S THEORY OF ANOMIE

Durkheim's ideas were applied to criminology by sociologist Robert Merton in his theory of anomie. Merton used a modified version of the concept of anomie to fit social, economic, and cultural conditions found in modern US society. He found that two elements of culture interact to produce potentially anomic conditions: culturally defined goals and socially approved means for obtaining them. Contemporary society stresses the goals of acquiring wealth, success, and power. Socially permissible means include hard work, education, and thrift.

CRIME AS A RESULT OF ANOMIE

Legitimate means to acquire wealth are stratified across class and status lines. Those with little formal education and few economic resources soon find that they are denied the ability to legally acquire wealth – the preeminent success symbol. When socially mandated goals are uniform throughout society and access to legitimate means is bound by class and status, the resulting strain produces anomie among those who are locked out of the legitimate opportunity structure. Consequently, they may develop criminal or delinquent solutions to the problem of attaining goals.

SOCIAL ADAPTATIONS

Merton argued that each person has his or her own concept of the goals of society and the means at his or her disposal to attain them.

1. **Conformity:** Conformity occurs when individuals both embrace conventional social goals and also have the means at their disposal to attain them. The conformist desires wealth and success and can obtain them through education and a high paying job. In a balanced, stable society, this is the most common social adaptation. If a majority of its people did not practise conformity, the society would cease to exist.
2. **Innovation:** Innovation occurs when an individual accepts the goals of society but rejects or is incapable of attaining them through legitimate means. Many people desire material goods and luxuries but lack the financial ability to attain them. The resulting conflict forces them to adopt innovative solutions to their dilemma: they steal, sell drugs, or extort money. Of the five adaptations, innovation is most closely associated with criminal behaviour.

   If successful, innovation can have serious, long-term social consequences. Criminal success helps convince otherwise law-abiding people that innovative means work better and faster than conventional ones. The prosperous drug dealer's expensive car and flashy clothes give out the message that crime pays. This explains why crime is initiated and sustained in certain low-income ecological areas.
3. **Ritualism:** Ritualists have gained the tools to accumulate wealth – for example, they are educated and informed – but reject established cultural goals of contemporary society. These are people who enjoy the routine of work without having the ambition to climb to the top of their profession; they are not risk takers. Some may enjoy being mid-level government bureaucrats. They are the professors who want to get tenure, but do not strive to become chairperson of the department. Some Ritualists gain pleasure from practicing traditional ceremonies regardless of whether they have a real purpose or goal. The rules and customs in religious orders, clubs, and college fraternities are appealing to Ritualists.

Ritualists should have the lowest level of criminal behaviour because they have abandoned the success goal, which is at the root of criminal activity.

4. **Retreatism**: Retreatists reject both the goals and the means of society. Merton suggests that people who adjust in this fashion are "in the society but not of it." Included in this category are "psychotics, psycho-neurotics, chronic autists, pariahs, outcasts, vagrants, vagabonds, tramps, chronic drunkards, and drug addicts." Because such people are morally or otherwise incapable of using both legitimate and illegitimate means, they attempt to escape their lack of success by withdrawing, either mentally or physically.
5. **Rebellion**: Rebellion involves substituting an alternative set of goals and means for conventional ones. Revolutionaries who wish to promote radical change in the existing social structure and who call for alternative lifestyles, goals, and beliefs are engaging in rebellion. People like Karl Marx and Nelson Mandela tried to replace the goals and means of the society. Rebellion may be a reaction against a corrupt and hated government or an effort to create alternate opportunities and lifestyles within the existing system.

Modes of Adaptation	Cultural Goals	Institutionalized Means
I. Conformity	+	+
II. Innovation	+	–
III. Ritualism	–	+
IV. Retreatism	–	–
V. Rebellion	±	±

CRITICISM OF MERTON'S STRAIN THEORY

A number of questions are left unanswered by anomie theory. Merton does not explain why people choose to commit certain types of crime. For example, why does one anomic person become a mugger and another deal drugs?

Critics have also suggested that people pursue a number of different goals, including educational, athletic, and social success. Juveniles may be more interested in immediate goals, such as having an active social life or being a good athlete, than in long-term "ideal" achievements, such as monetary success. Achieving these goals is not a matter of social class alone; other factors, including athletic ability, intelligence, personality, and family life, can either hinder or assist goal attainment. Anomie theory also assumes that all people share the same goals and values, which is false.

CONCLUSION

According to anomie theory, social inequality leads to perceptions of anomie. To resolve the goals–means conflict and relieve their sense of strain, some people innovate by stealing or extorting money, others retreat into drugs and alcohol, others rebel by joining revolutionary groups, and still others get involved in ritualistic behaviour by joining a religious cult.

Merton's view of anomie has been one of the most enduring and influential sociological theories of criminality. By linking deviant behaviour to the success goals that control social behaviour, anomie theory attempts to pinpoint the cause of the conflict that produces personal frustration and consequent criminality. By acknowledging that society unfairly distributes the legitimate means to achieving success, anomie theory helps explain the existence of high-crime areas and the apparent predominance of delinquent and criminal behaviour among the lower class. By suggesting that social conditions, not individual personalities, produce crime, Merton greatly influenced the direction taken to reduce and control criminality during the latter half of the 20th century.

SOCIAL PROCESS THEORIES OF CRIMINOLOGY

Psychological Sociology

According to this school of thought, an individual's relationship to important social processes, such as education, family life, and peer relations, is the key to understanding human behaviour. Poverty and social disorganization alone are not sufficient to cause criminal activity because, after all, many people living in the most deteriorated areas never commit criminal offences. Something else is needed. Research seemed to show that children who grow up in homes wracked by conflict, attend inadequate schools, and/or associate with deviant peers become exposed to criminal forces.

In this view, the key to understanding crime can be found in human socialization – the interactions people have with various organizations, institutions, and processes of society. Most people are influenced by their family relationships, peer group associations, educational experiences, and interactions with authority figures, including teachers, employers, and agents of the justice system.

If these relationships are positive and supportive, people can succeed within the rules of society; if these relationships are dysfunctional and destructive, conventional success may be impossible, and criminal solutions may become a feasible alternative. Taken together, this view of crime is referred to as social process theory.

Theorists who believe that an individual's socialization determines the likelihood of criminality adopt the social process approach to human behaviour. The social process approach has several independent branches.

III. Differential Association Theory

INTRODUCTION

It is also called Social Learning Theory which suggests that people learn the techniques and attitudes of crime from close and intimate relationships with criminal peers; crime is a learned behaviour. In another way, Social Learning Theory assumes people are born good and learn to be bad. One of the most prominent social learning theories is Edwin H. Sutherland's differential association theory. Often considered the preeminent U.S. criminologist, Sutherland first put forth his theory in his 1939 text, *Principles of Criminology*. The final version of the theory appeared in 1947. When Sutherland died in 1950, Donald Cressey, his long-time associate, continued his work. Cressey was so successful in explaining and popularizing his mentor's efforts that differential association remains one of the most enduring explanations of criminal behaviour.

CRIME IS LEARNED THROUGH A SOCIAL PROCESS

Sutherland's research on white-collar crime, professional theft, and intelligence led him to dispute the notion that crime was a function of the inadequacy of people in the lower classes. To Sutherland, criminality stemmed neither from individual traits nor from socio-economic position; instead, he believed it to be a function of a learning process that could affect any individual in any culture. Acquiring a behaviour is a social learning process, not a political or legal process. Skills and motives conducive to crime are learned as a result of contacts with pro-crime values, attitudes, and definitions and other patterns of criminal behaviour.

POSTULATES AND PRINCIPLES OF DIFFERENTIAL ASSOCIATION

The basic principles of differential association are explained as follows:

1. ***Criminal behaviour is learned:*** This statement differentiates Sutherland's theory from prior attempts to classify criminal behaviour as an inherent characteristic of criminals. By suggesting that delinquent and criminal behaviour is learned, Sutherland implied that it can be classified in the same manner as any other learned behaviour, such as writing, painting, or reading.
2. ***Criminal behaviour is learned in interaction with other persons in a process of communication:*** Learning is a by-product of interaction. Criminal behaviour is learned as a by-product of interacting with others. Sutherland believed individuals do not start violating the law simply by living in a criminogenic environment or by manifesting personal characteristics, such as low IQ or family problems, associated with criminality. People – family, friends, peers – have the greatest influence on their deviant behaviour and attitude development. Relationships with these influential individuals colour and control the way people interpret everyday events. For example, research shows that children who grow up in homes where parents abuse alcohol are more likely to view drinking as being socially and physically beneficial. The intimacy of these associations far outweighs the importance of any other form of communication, such as movies or television. Even on those rare occasions when violent motion pictures seem to provoke mass criminal episodes, these outbreaks can be more readily explained as a reaction to peer group pressure than as a reaction to the films themselves.
3. ***The principal part of the learning of criminal behaviour occurs within intimate personal groups:*** Intimate groups like family members, peers, and colleagues have more influence on people's thinking pattern and therefore if somebody interacts with intimate groups who have criminal involvement, the chances of such a person's committing crime increase.
4. ***When criminal behaviour is learned, the learning includes (a) techniques of committing the crime, which are sometimes very complicated, sometimes very simple, and (b) the specific direction of motives, drives, rationalizations, and attitudes:*** Criminal techniques are learned. Learning criminal behaviour involves acquiring the techniques of committing the crime, which are sometimes very complicated and sometimes very simple. This requires learning the specific direction of motives, drives, rationalizations, and attitudes. Some kids may meet and associate with criminal "mentors" who teach them how to be successful criminals and gain the greatest benefits from their criminal activities. They learn the proper way to pick a lock, shoplift, and obtain and use narcotics. In addition, novice criminals learn to use the proper terminology for their acts and then acquire "proper" reactions to law violations. For example, getting high on marijuana and learning the proper way to smoke a joint are behaviour patterns usually acquired from more experienced companions. Moreover, criminals must learn how to react properly to their illegal acts, such as when to defend them, rationalize them, or show remorse for them.
5. ***The specific direction of motives and drives is learned from definitions of the legal codes as favourable or unfavourable:*** Perceptions of the legal code influence motives and drives. The specific direction of motives and drives is learned from perceptions of various aspects of the legal code as being favourable or unfavourable. The reaction to social rules and laws is not uniform across society, and people constantly come into contact with others who maintain different views on the utility of obeying the legal code. Some people they admire may openly disdain or flout the law or ignore its substance. People experience what

Sutherland calls culture conflict when they are exposed to different and opposing attitudes toward what is right and wrong, moral and immoral. The conflict of social attitudes and cultural norms is the basis for the concept of differential association.

6. ***A person becomes delinquent because of an excess of definitions favourable to violation of law over definitions unfavourable to violation of the law.***
7. ***The process of learning criminal behaviour by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning.***
8. ***Although criminal behaviour is an expression of general needs and values, it is not explained by those general needs and values, because non-criminal behaviour is an expression of the same needs and values.***
9. ***Differential association varies in frequency, duration, priority, and intensity. The most frequent, longest-running, earliest and closest influences will be most efficacious or determinant of learned behaviour.***

Differential associations may vary in frequency, duration, priority, and intensity. Whether a person learns to obey the law or to disregard it is influenced by the quality of social interactions. Those of lasting duration have greater influence than those that are brief. Similarly, frequent contacts have greater effect than rare and haphazard contacts. Sutherland did not specify what he meant by priority, but Cressey and others have interpreted the term to mean the age of children when they first encounter definitions of criminality. Contacts made early in life probably have a greater and more far-reaching influence than those developed later on. Finally, intensity is generally interpreted to mean the importance and prestige attributed to the individual or groups from whom the definitions are learned. For example, the influence of a father, mother, or trusted friend far outweighs the effect of more socially distant figures.

Sutherland referred to the sixth statement as the principle of differential association. According to Sutherland, an individual learns two types of definitions toward committing a particular behaviour. He can either learn favourable definitions from others that would likely increase the probability that he will commit the behaviour, or he can learn unfavourable definitions that would likely decrease the probability that he would engage in a particular behaviour.

A person becomes a criminal when he or she perceives more favourable than unfavourable consequences to violating the law. According to Sutherland's theory, individuals become law violators when they are in contact with people, groups, or events that produce an excess of definitions favourable toward criminality and are isolated from counteracting forces. A definition favourable toward criminality occurs, for example, when a person is exposed to friends sneaking into a theatre to avoid paying for a ticket or talking about the virtues of getting high on drugs. A definition unfavourable toward crime occurs when friends or parents demonstrate their disapproval of crime. Neutral behaviour, such as reading a book, is neither positive nor negative with respect to law violation. Cressey argues that neutral behaviour is important; for example, when a child is occupied doing something neutral, it prevents him or her from being in contact with those involved in criminal behaviours.

LIMITATIONS OR CRITICISM

Critically speaking, the theory has many strengths but differential association theory fails to explain why one youth who is exposed to delinquent definitions eventually succumbs to them, while another, living under the same conditions, is able to avoid criminal entanglements. It also fails to account for the origin of delinquent definitions: How did the first "teacher" learn delinquent attitudes and definitions in order to pass them on? Who taught the teacher?

Differential association theory assumes that youths learn about crime and then commit criminal acts, but it is also possible that experienced delinquents and criminals seek out like minded peers after they engage in antisocial acts and that the internalization of deviant attitudes follows, rather than precedes, criminality ("birds of a feather flock together"). Research on gang boys shows that they are involved in high rates of criminality before they join gangs, indicating that the group experience facilitates their antisocial behaviour rather than playing a role in its creation.

Despite these criticisms, differential association theory maintains an important place in the study of criminal behaviour. For one thing, it provides a consistent explanation of all types of delinquent and criminal behaviour. Unlike social structure theories, it is not limited to the explanation of a single facet of antisocial activity, such as lower-class gang activity. The theory can also account for the extensive delinquent behaviour found even in middle- and upper-class areas, where youths may be exposed to a variety of pro-delinquent definitions from such sources as overly opportunistic parents and friends. The theory appears flexible and able to explain current trends in crime and is not bound by those that existed when the theory was first created. For example, Sameer Hinduja and Jason Ingram found that adolescents who pirate music off the Internet are influenced by both personal friends and also online friends they meet in chat rooms and so on. Internet music piracy is not a crime that Sutherland had in mind when he first proposed the theory.

CONCLUSION

In sum, differential association theory holds that people learn criminal attitudes and behavior while in their adolescence from close and trusted friends and/or relatives. A criminal career develops if learned antisocial values and behaviours are not at least matched or exceeded by conventional attitudes and behaviours. Criminal behaviour, then, is learned in a process that is similar to learning any other human behaviour.

IV. Labelling Theory

INTRODUCTION

Labelling Theory (also called Social Reaction Theory) says people become criminals when significant members of society label them with criminal tags such as thief and drug addict, and they accept those labels as a personal identity. Social reaction theory assumes that, whether good or bad, people are controlled by the reactions of others.

IMPACT OF SOCIAL REACTION ON CRIMINAL BEHAVIOURS

Labelling theory was the first to address both individual criminality and the impact of social reaction on criminal behaviours. Kobrin wrote that labelling is an intrinsic feature of all human interaction. As such, labelling theorists argue that a complete picture of crime or deviance cannot be attained by merely examining offenders and their characteristics; instead, a complete picture of deviance must also reveal societal reactions to incidents of rule breaking. In line with symbolic interactionism, labelling theorists state that the reaction of the society, the community, or a social group will affect the rule breaker in one critical way: A person labelled as a deviant may accept that deviant label by coming to view himself or herself as a deviant (i.e. internalizing the label) and then engaging in further criminal behaviour that is both consistent with the label and the way in which the label was applied. This – the creation of additional deviance and criminality because of the application of a deviant label – is the central proposition of the labelling perspective.

The labelling perspective was developed over many years by a number of different social scientists Becker, Cohen, Kitsuse, Lemert, and Tannenbaum. It would not be until the 1960s that research applying symbolic interaction theory to criminality would occur in the form of the labelling theory.

SYMBOLIC INTERACTIONISM AND LABELLING PERSPECTIVE

The labelling perspective has its origins in the work of Mead and Cooley in the sociological theory of symbolic interactionism. Mead differentiated between the "me" and the "I," and Cooley referred to this process as the looking-glass self, which is a reference to the socially shaped self. Although the ideas inherent in symbolic interaction work are at the core of the labelling perspective, it was Tannenbaum who first suggested their application to criminal behaviour. In his discussion of a mostly sub-cultural theory of crime, Tannenbaum introduced the concept of the "dramatization of evil." As he argued, "The dramatization of the 'evil' which separates the child out of his group for specialized treatment plays a greater role in making the criminal than perhaps any other experience."

WHAT IS A LABEL?

Labels represent behaviour and attitude characteristics; labels help define not just one trait but the whole person. People labelled insane are also assumed to be dangerous, dishonest, unstable, violent, strange, and otherwise unsound. Valued labels, including smart, honest, and hardworking, suggest overall competence. These labels can improve self-image and social standing. Research shows that people who are labelled with one positive trait, such as being physically attractive, are assumed to maintain other traits, such as being intelligent and competent. In contrast, negative labels – including troublemaker, mentally ill, and stupid – help stigmatize the recipients of these labels and reduce their self-image. Those who have accepted these labels are more prone to engage in deviant behaviours than those whose self-image has not been so tarnished.

The degree to which a person is perceived as a social deviant may affect his or her treatment at home, at work, at school, and in other social situations. Children may find that their parents consider them a bad influence on younger brothers and sisters. School officials may limit them to classes reserved for people with behavioural problems. Likewise, when adults are labelled as criminal, ex-con, or drug addict, they may find their eligibility for employment severely restricted. Furthermore, if the label is bestowed as the result of conviction for a criminal offense, the labelled person may be subjected to official sanctions ranging from a mild reprimand to incarceration.

TANNENBAUM AND LABELLING PERSPECTIVE

When a child commits a deviant or criminal act, this child is segregated from other children. A child who has come to the attention of the neighbourhood or the criminal justice system has thus been "tagged." Tannenbaum provided the following description:

> *[The entire] process of making the criminal is a process of tagging, defining, identifying, segregating, describing, emphasizing, making conscious and self-conscious; it becomes a way of stimulating, suggesting, emphasizing, and evoking the very traits that are complained of.*

This process is not a static one; instead, it is a dynamic process of the individual "reacting back against society," which in turn is constantly reacting to the individual. In this way, an individual will behave in a manner that is consistent with others' beliefs and expectations.

The person thus takes on the characteristic of the so-called tag. The "evil" that is trying to be contained by the criminal justice system is then further exacerbated.

LEMERT'S CONCEPT OF PRIMARY AND SECONDARY DEVIANCE

Lemert was the next to explore the intricate web of the self, society, and deviance. He introduced the concepts of societal reaction and primary and secondary deviance. Lemert used the socio-psychological concepts of primary and secondary deviance to "distinguish between original and effective causes of deviant attributes and actions which are associated with physical defects and incapacity, crime, and mental disorders." He argued that primary deviance arose from a variety of social, psychological, cultural, and physiological processes.

Primary deviance consists of "initial acts of norm violations or crimes that have very little influence on the actor and can be quickly forgotten". Primary deviants undergo no change in their psychological make-up or in the way they act as members of society. When they are apprehended, however, primary deviants suffer a variety of consequences, many of which focus on the application to them of such labels as sick, criminal, insane, and so on. Thus, secondary deviance is caused by the way in which society reacts to some of the people who engage in primary deviance. Secondary deviance "refers to a special class of socially defined responses which people make to problems created by the social reaction to deviance."

Secondary deviance is promoted through an internal process of normalization of behaviour and a lack of social controls; this process creates, maintains, and intensifies stigmas that include invidious labels, marks, or publicly disseminated information.

DEVIANCE AS IDENTITY TRANSFORMATION

The drug experimenter becomes an addict; the recreational drinker becomes an alcoholic; the joy rider a car thief. As the society begins to recognize and sanction these behaviours, the application of the labels increases, or amplifies, instead of decreases, the act. Lemert's concept of secondary deviance goes to the heart of labelling theory: deviance as identity transformation.

Labelled people may find themselves turning to others similarly stigmatized for support and companionship. Isolated from conventional society, they may identify themselves as members of an outcast group and become locked into a deviant career.

BECKER'S CONCEPT OF OUTSIDER

Tannenbaum, Lemert, and Kitsuse had discussed important concepts in labelling and stigmatization, but the labelling approach was more systematically refined with the work of Becker on societal "outsiders." Becker argued that when a "rule is enforced, the person who is supposed to have broken it may be seen as a special kind of person ... an outsider."

CONCLUSION

In conclusion, as the labelled youth become adults, the labelling process continues to take its toll. Male drug users labelled as addicts by social control agencies eventually become self-labelled and increase their drug use. People arrested in domestic violence cases, especially those with a low stake in conformity (e.g those who are jobless and unmarried), increase offending after being given official labels. And once in prison, inmates labelled high risk are more likely to have disciplinary problems than those who are spared such negative labels.

V. Social Control Theory

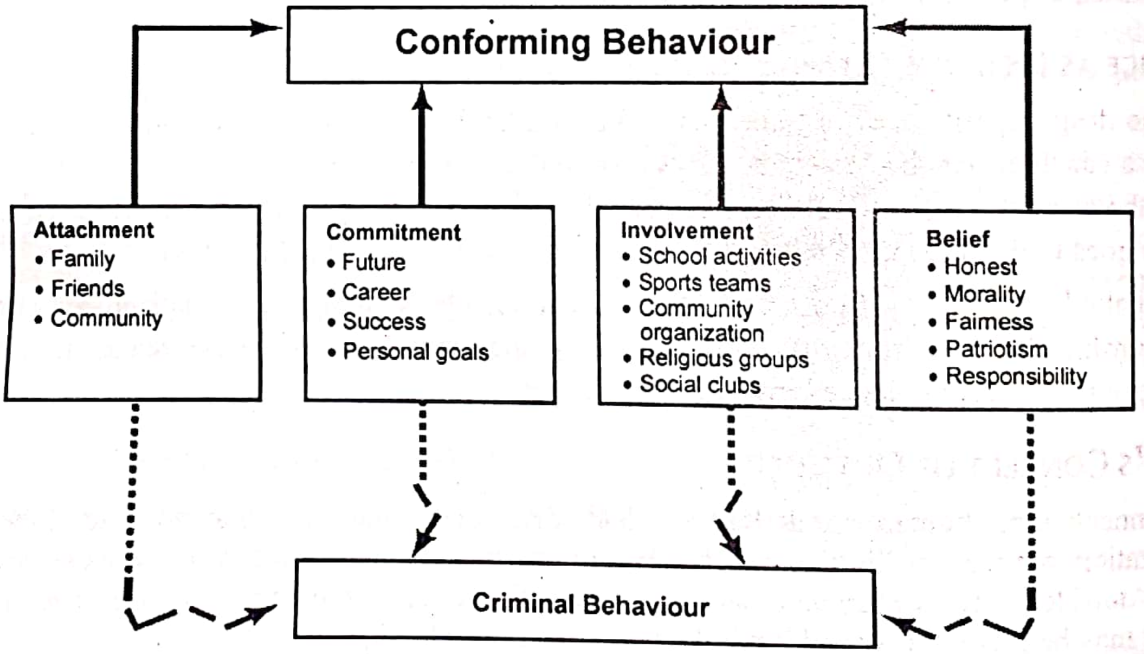
INTRODUCTION

Social control theory maintains that everyone has the potential to become a criminal, but that most people are controlled by their bonds to society. *Crime occurs when the forces that bind people to society are weakened or broken.* Put another way, *Social control theory assumes people are born bad and must be controlled in order to be good.* The social control approach to understanding crime is one of the three major sociological perspectives in contemporary criminology. Control theorists believe that conformity to the rules of society is produced by socialization and maintained by ties to people and institutions – to family members, friends, schools, and jobs. Put briefly, crime and delinquency result when the individual's bond to society is weak or broken. As social bonds increase in strength, the costs of crime to the individual increase as well.

Social control theories do not support expansion of the criminal justice system. They do not favour larger police forces or lengthy incarceration as crime control policies. They favour instead policies designed to establish stronger bonds between individuals and society.

THE CENTRAL IDEA OF CONTROL THEORY

Control theories do not answer why people commit crime. Instead, they answer 'why people do not commit crime'.


Conforming Behaviour
Attachment
• Family
• Friends
• Community
Commitment
• Future
• Career
• Success
• Personal goals
Involvement
• School activities
• Sports teams
• Community organization
• Religious groups
• Social clubs
Belief
• Honest
• Morality
• Fairness
• Patriotism
• Responsibility
Criminal Behaviour

What controls people from committing crime? Social control theories maintain that all people have the potential to violate the law and that modern society presents many opportunities for illegal activity. Criminal activities, such as drug abuse and car theft, are often exciting pastimes that hold the promise of immediate reward and gratification. Considering the attractions of crime, the question control theorists pose is: why do people obey the rules of society? A choice theorist would respond that it is the fear of punishment; structural theorists would say that obedience is a function of having access to legitimate opportunities; learning theorists would explain that obedience is acquired through contact with law-abiding parents and peers. In contrast, social control theorists argue that people obey the law because behaviour and passions are being controlled by internal and external forces. Because they have been properly socialized, most people have developed a strong moral sense, which renders them incapable of hurting others and violating social norms.

Travis Hirschi suggests that in all elements of society people vary in how they respond to conventional social rules and values. Among all ethnic, religious, racial, and social groups, people whose bond to society is weak may fall prey to criminogenic behaviour patterns.

SOCIAL BONDS OR BONDINGS

The following list of elements of the social bond – attachment, commitment, involvement, and belief – have proved useful in explaining the logic of the theory.

Attachment

Attachment refers to a person's sensitivity to and interest in others. Without a sense of attachment, psychologists believe a person becomes a psychopath and loses the ability to relate coherently to the world. The acceptance of social norms and the development of a social conscience depend on attachment to and caring for other human beings. Hirschi views parents, peers, and schools as the important social institutions with which a person should maintain ties. Attachment to parents is the most important. Even if a family is shattered by divorce or separation, a child must retain a strong attachment to one or both parents. Without this attachment, it is unlikely that feelings of respect for others in authority will develop.

- The evidence is clear that family attachments are strongly correlated with (non)delinquency. From this, it can be concluded that family attachments play a role in the socialization of the child as well as in maintaining his or her subsequent conformity to the rules of society.
- Attachment to school is also a well-established predictor of delinquency. Students who report liking school and caring about the opinion of teachers are far less likely to be delinquent.

The words are many: affection, love, concern, care, and respect, to name only some. Social control theorists use attachment as an abstract summary of these concepts.

CRITICAL ANALYSIS OF ATTACHMENT BOND

Sometimes, people also commit crime because of their strong attachment to their families. A father whose children are hungry and he has nothing to offer them, he may engage in street crime to get some money and feed his children.

However, research indicates that, as Hirschi predicts, kids who are attached to their families, friends, and school are less likely to get involved in a deviant peer group and consequently less likely to engage in criminal activities. Teens who are attached to their parents are also able to develop the social skills that equip them both to maintain harmonious social ties and to escape life stresses such as school failure. In contrast, family detachment – including intra-family conflict, abuse of children, and lack of affection, supervision, and family pride – are predictive of delinquent conduct. Attachment to education is equally important. Youths who are detached from the educational experience are at risk of criminality; those who are committed to school are less likely to engage in delinquent acts. Detachment and alienation from school may be even more predictive of delinquency than school failure and/or educational underachievement.

Commitment

Everyone seems to understand the paraphrased song lyric that freedom is another way of saying that one has nothing left to lose. What does one lose or risk losing from crime? The short answer is life, liberty, and property. The long answer, attachments aside, is that it depends on one's assets and prospects, on one's accomplishments and aspirations. Good students are likely to aspire to further education and are unlikely to commit delinquent acts or to get into difficulties with the police.

Commitment involves the time, energy, and effort expended in conventional lines of action, such as getting an education and saving money for the future. If people build a strong commitment to conventional society, they will be less likely to engage in acts that will jeopardize their hard-won position. Conversely, the lack of commitment to conventional values may foreshadow a condition in which risk-taking behaviour, such as crime, becomes a reasonable behaviour alternative. The association may be reciprocal. Kids who drink and engage in deviant behaviour are more likely to fail in school; kids who fail in school are more likely to later drink and engage in deviant behaviour.

CRITICAL ANALYSIS OF COMMITMENT BOND

When commitment becomes over-commitment, it forces people to achieve their goals whatever the costs. There are people who commit money laundering and corruption in order to achieve their committed goals of achieving wealth and status in the society.

However, as predicted by Hirschi, kids who are committed to future success and achievement are less likely to become involved in delinquent behaviours than those who lack such commitment.

Involvement

Heavy involvement in conventional activities leaves little time for illegal behaviour. When people become involved in school, recreation, and family, Hirschi believes, it insulates them from the potential lure of criminal behaviour, whereas idleness enhances it.

Crimes are events that take place at a given point in time. Conditions necessary for their accomplishment may or may not be present. Control theorists, like most other theorists, have seized on this fact and tried to incorporate the notion of opportunity into their explanation of crime. They do so through the concept of involvement, which is short for "involvement in conventional activities." The idea is that people doing conventional things – working, playing games, watching sporting events or television, doing homework, engaging in hobbies, or talking to parents – are to that extent unable to commit delinquent acts, whatever their delinquent tendencies may be.

CRITICAL ANALYSIS OF INVOLVEMENT BOND

Despite its firm place in the common sense of criminology, the idea of involvement/limited opportunity has not fared well when put to the test. More than one researcher has found that adolescents with jobs are more rather than less likely to be delinquent.

First, it is based on a misconception of the nature of crime. There are people who are involved in conventional jobs but they are found to be engaged criminal acts like white collar crime, cybercrime and money laundering. Because opportunities for crimes are ever-present, the hope of preventing them by otherwise occupying the potential offender has proved vain. A second problem with this concept is that it neglects the fact that opportunities for crime reside to a large extent in the eye of the beholder. Objective conditions matter, but so do the perceptions of actors.

However, research shows that youths who are involved in conventional leisure activities, such as supervised social activities and non-competitive sports, are less likely to engage in delinquency than those who are involved in unconventional leisure activities and unsupervised, peer-oriented social pursuits. One study found that students who engage in a significant amount of extracurricular activities from 8th grade through 12th grade are more likely to experience high academic achievement and pro-social behaviours extending into young adulthood.

Belief

Belief can be of religious or irreligious nature. People who live in the same social setting often share common moral beliefs; they may adhere to such values as sharing, sensitivity to the rights of others, and admiration for the legal code. If these beliefs are absent or weakened, individuals are more likely to participate in antisocial or illegal acts.

The role of beliefs in the causation of delinquency is a matter of considerable dispute. Some social scientists argue that they are of central importance. Others ignore them, suggesting that they are nothing more than words that reflect (and justify) past behaviour but are in no way responsible for it. Control theory rejects the view that beliefs are positive causes of delinquency, that offenders are somehow living up to their beliefs when they commit delinquent acts. Control theory is, however, compatible with the view that some beliefs prevent delinquency while others allow it.

CRITICAL ANALYSIS OF BELIEF BOND

When someone's belief becomes dogmatic, it gives birth to intolerance. Dogmatic belief in one's values with no regard for diversity may also lead to violence and terrorism.

However, there is support for Hirschi's view that holding positive beliefs is inversely related to criminality. Children who are involved in religious activities and hold conventional religious beliefs are less likely to become involved in substance abuse. Kids who live in areas marked by strong religious values and who hold strong religious beliefs themselves are less likely to engage in delinquent activities than adolescents who do not hold such beliefs or who live in less devout communities.

Thomas Hobbes and Control Theory

The intellectual underpinnings of social control theory may be seen in the 17th century work of Thomas Hobbes. In his famous book *Leviathan* Hobbes described a set of basic assumptions about human nature and the origins of civil society. Hobbes believed that humans naturally seek personal advantage without regard for the rights or concerns of others. In the absence of external restraints, in a state of nature, crime is a rational choice, a "war of all against all" naturally follows, and the life of everyone is "nasty, poor, brutish, and short." Fortunately, in Hobbes's view, a second choice presents itself to individuals capable of calculating the costs and benefits of their actions. They can continue in a state of war, or they can establish a system of laws and a government empowered to punish those who resort to force and fraud in pursuit of their private interests. Given the choice between war and peace, rational people choose to submit to government authority in return for the safety of their persons and property.

Hobbes's theory of crime is a choice theory. People consider the costs and benefits of crime and act accordingly. The important costs of crime are those exacted by the state – which has the power to deprive citizens of life, liberty, and property. The content of the criminal law is not problematic. There is consensus that the use of force and fraud for private purposes is illegitimate.

Hobbes's view of human nature does not imply that people are inherently criminal or that they prefer crime; it suggests only that self-interest underlies whatever they do. They harm others because it gives them pleasure or advantage. They steal because stealing provides goods or money. They hit or threaten to hit others because such acts may bring status, a feeling of justice, or control of their behaviour. They do good things for self-interested reasons as well. They are trustworthy and helpful because being so brings such rewards as trust and gratitude. From the point of view of their motives, there is thus no difference between offenders and non-offenders, between criminal and noncriminal acts; all reflect the same basic desires. Thus, working from the Hobbesian view of human nature, social control theories do not ask why people commit criminal acts. They ask instead why, given the plentiful opportunities for criminal acts and their obvious benefits, people do not commit more of them.

Two Types of Control Systems

W. Reckless has identified two types of control systems which control people from engaging in criminal behaviour.

1. Inner Control System
2. Outer Control System

Inner Control System: Inner control system include a person's inner self; his or her moral ethics, personal principles, and conscience. These things control people from committing crime. If someone's conscience breaks down, it becomes easy for such a person to infringe upon the rights of others and commit crime.

Outer Control System: If someone's inner control system breaks down, then the outer control system tends to control such a person from committing crime. The outer control system has two dimensions:

- **(a)** ***Informal Outer Control:*** It includes family, school, workplace, masjid, media and peers.
- **(b)** ***Formal Outer Control:*** The formal outer control system includes law enforcement agencies; police, FIA, NAB, ANF, courts and prisons.

POLICY IMPLICATIONS OF CONTROL THEORY

The criminal justice system receives people after they have committed offences, but it has little or no influence on their prior or subsequent behaviour. The idea that crime can be prevented by treating or rehabilitating offenders is contrary to the assumptions of control theory. The theory sees crime as a choice that does not reflect illness or defective judgment but the social circumstances of the actor and the logic of the situation.

Crime control strategies that go by such names as situational crime prevention, the routine activity approach, and environmental design are perfectly compatible with control theory. All assume that crimes may be prevented by focusing on the conditions necessary for their occurrence – by reducing their benefits, by making them more hazardous or difficult. Unlike control theory, these approaches focus on one type of crime at a time – burglary, robbery, assault – but they, too, see the potential offender as acting out of choice rather than compulsion. A choosing offender may attack a lone individual but will not consider attacking a member of a group; a choosing offender may enter an unlocked door but refrain from breaking down a door that is securely locked. The beauty of these approaches is that, to the extent they are successful, they eliminate criminals by eliminating crime. Situational crime prevention theorists like to say that "opportunity makes the thief," but a more direct statement of their position would be that "theft makes the thief."

Control theory cannot provide particularly good answers to this question anymore than strain theory can offer unusual insight about how to improve economic conditions among the poor. We do know that stakes in conformity cannot be imposed from without, that society cannot force friends on the friendless. But we know, too, that some conditions are more conducive than others to the creation and maintenance of the natural bonds that make people consider the consequences of their acts for the lives and well-being of others. With such conditions in place, the theory claims, the need for crime control policies is greatly reduced.

CONCLUSION

In his insightful work on social control theory, Hirschi links the onset of criminality to the weakening of the ties that bind people to society. He assumes that all individuals are potential law violators, but they are kept under control because they fear that illegal behaviour will damage their relationships with friends, parents, neighbours, teachers, and employers. Without these social ties or bonds, and in the absence of sensitivity to and interest in others, a person is free to commit criminal acts.

SIMILARITIES AND DIFFERENCES BETWEEN SOCIOLOGICAL THEORIES

As we have seen, the underlying assumptions of social control theory are in many respects similar to those of classical theories of crime, theories that have come down to us under such names as deterrence theory and rational choice theory. The differences among them are often differences in emphasis. Deterrence theory claims that the key to crime control is found in the swiftness, severity, and certainty of the punishments administered by the legal system. Rational choice theory focuses on the costs and benefits of crime. Control theorists accept the importance of punishment, but they ignore the punishments of the legal system and thereby question their role in the control of crime. They do the same with benefits of crime – that is, they ignore them on the grounds that the benefits of crime are the same as the benefits of non-crime.

The assumptions of control theories contrast sharply with those of other sociological explanations of crime. Cultural deviance or social learning theories assume that there is no natural capacity for crime. In their view, all human action, whether crime or conformity, is the product of a combination of socializing influences. Peers exert influence on the individual, as does the family and, more broadly, the prevailing culture. Where the sum total of influences directs the individual in particular instances to engage in crime, then that person will do so. Where these influences are absent, crime cannot occur. The offender is thus a conformist, albeit not to the rules of the dominant society.

Strain theories (sometimes called anomie theories) assume that an individual is naturally inclined to conform to standard cultural values but can be pushed into crime when the social structure fails to provide legitimate opportunities to succeed. These theorists emphasize the influence of the American Dream, which produces aspirations and desires that often (all too often, scholars say) cannot be satisfied within the limits of the law. These sociological perspectives have proved popular and adaptable. They continue to provide a foundation for critiques of social control theory.

QUESTION 6

ISLAMIC PERSPECTIVE ON DEVIANCE AND CRIME

Q. **What is the Islamic perspective on crime and punishment? Explain your answer with the help of proper examples. (CSS-2018)**

Q. **Islam regards crime as a danger to society. Discuss.**

Q. **Islamic concept of punishment is apparently based on severe punishment but the real objective is deterrence. Explain.**

ANSWER

INTRODUCTION

Islam regards crime as a danger to the overall well-being of the society. When deviance is prohibited by law, it becomes a crime according to Islam. In Islam, violation of the laws given by Allah and violation of the laws made by State according to Islam is considered as crime. Islamic law distinguishes between crimes for which the punishment is determined in the Quran or the Sunnah, and crimes for which the punishment is established by the judge at his own discretion. Crimes and punishments specified in the Quran or the Sunnah are called *hadd*, from the Arabic term for '*limit*' or '*boundary*'. Punishments which are at the discretion of the judge are called *ta'zir*.

ISLAMIC PERSPECTIVE ON CAUSES OF CRIME

Islam has clear perspective about causes of deviance and crime. According to Islam, various economic, psychological and social factors lead people to commit crime and violate the laws set by Allah Almighty and the laws made by the State. Major cause of crime according to Islam include:

1. **Poverty:** The Beloved Prophet (PBUH) said that *'Poverty takes man closer to apostasy (kufar)'*. Fulfilment of the basic needs of citizens can decrease the rate of theft and other street crime in Pakistan.
2. **Materialism:** Islam discourages a life based on materialism and instead promotes the unity of matter and spirit. Mere focus on materialism increases man's worldly needs to an uncontrolled level and the ones who are unable to meet those needs legally, they sometimes commit crime to meet their individual and financial needs. The ex-DG Parks of Karachi accumulated immense wealth and other luxuries through corruption because he thought only wealth would give him the respectable status in society. Materialism is the root cause of various types of white-collar crime, money laundering, and drugs trade.
3. **Illiteracy:** Illiteracy is another cause of crime according to Islam and that is the reason why Islam places great focus on education and makes it compulsory for every Muslim to get education.
4. **Bad and Criminal Company:** Bad and criminal company also raises the acceptance level of criminal behaviour for individuals. Children get influenced by their criminal family members and peers.
5. **Social injustice:** It is another major cause of crime because when people are underprivileged and wealth does not circulate in the society, some poor sections of society get marginalized and sometimes they choose to commit crime to meet their basic needs.
6. **Bad Governance:** When people do not get justice from state institutions like Police, FIA and Courts, they look for alternative and at times illegal means to get retribution from the suspects.
7. **Criminal or Negative Labelling:** Islam forbids negative labelling of criminals because it affects their self-image and it may lead them to accept that label and become a habitual criminal.

THE ISLAMIC APPROACH TO CONTROLLING CRIME

The ultimate objective of every Islamic legal injunction is to secure the welfare of humanity in this world and the next by establishing a righteous and egalitarian society. Therefore, they can all be referred back to universal principles which are necessary for human welfare to be secured. These universal principles are the preservation of life, liberty, movement, religion, reason, lineage and property.

To preserve life, it prescribes the law of retribution. To preserve religion, it prescribes the punishment for apostasy. To preserve reason, it prescribes the punishment for drinking. To preserve lineage, it prescribes the punishment for fornication. To preserve wealth, it prescribes the punishment for theft and robbery.

ISLAMIC PERSPECTIVE ON PUNISHMENT

The Islamic concept of punishment is apparently based on severe punishments. The real objectives is the deterrence and prevention of crime. Since crime disturbs social order and may create anarchy, therefore Islam recommends different kinds of punishment for different crimes based on the severity of the offence.

APPLICATION OF *'HADD'* OR *'TAZIR'* PUNISHMENTS

Where an offence has been committed but there is insufficient evidence to warrant the application of the *hadd* punishment, the *ta'zir* punishment is applied, subject to the discretion of the judge. However, it may never exceed the *hadd* punishment. The offences of homicide and bodily injuries are known as *qisas* offences.

TYPES OF CRIME AND THEIR PUNISHMENTS IN ISLAM

1. **Homicide and Injuries:** Islamic criminal law on homicide and wounding constituted a major reform of pre-Islamic tribal custom. Customary law demanded that a homicide was dealt with by revenge killings of not only the murderer but also of several of his fellow tribesmen. The result was inevitably a blood feud between clans that would last for many years. Islamic law introduced three major reforms:
   - only the guilty party was liable for the crime and could be punished;
   - a punishment was only imposed if the wounding or killing had been committed deliberately and wrongfully;
   - the facts of the crime and the guilt of the accused had to be established before the ruler or a judge.

   Once guilt is established it is not the ruler or the judge who decides on the punishment of the guilty party but the victim or the victim's heirs. The first option of the victim is to insist on retaliation in the form of *qisas*. The second option is to waive the right of retaliation and to accept instead monetary compensation from the culprit in the form of *diyyat* or blood money. The third option is remission (to forgive the culprit).
2. **Theft:** The third *hadd* offence is theft, which is defined as taking and carrying away without right, a thing of value from a protected place. Again, to establish the *hadd* offence the testimony of two eye-witnesses of the highest moral integrity is required.

   Circumstantial evidence can never suffice to procure a conviction to the *hadd* offence although it can result in the application of a lesser *ta'zir* punishment. The punishment for a first offence of theft is the amputation of the right hand. Subsequent offenders lose the left foot, then, if they steal again, the other hand and finally the remaining foot.
3. **Qazf or libel:** The fourth *hadd* offence is *qazf* – falsely making an accusation of *zina*. To make such an accusation falsely is punished by 80 lashes.

4. **Intoxication:** The drinking of wine or other intoxicating liquids is also a *hadd* offence. Some countries, such as Saudi Arabia, have also made the taking of hallucinatory drugs a *hadd* offence. The punishment for this offence is 80 lashes.
5. **Hirabah:** The final *hadd* offence is *hirabah*, which is often translated as highway robbery, but which covers other offences committed by stealth. The punishment for *hirabah* was traditionally crucifixion, among other punishments prescribed in Surah 5 verse 33.
6. **Apostasy:** The punishment for apostasy under classical Islamic law is death, but before the sentence is carried out the accused must be offered the chance to return to Islam and belief. Apostasy is still a capital offence in Saudi Arabia, Yemen and the Islamic Republic of Iran. Apostasy does not appear as a criminal offence in either the Pakistan Penal Code (PPC) or the Code of Criminal Procedure of Pakistan. However, since the amendment of Article 295-C of the PPC to make blasphemy in the name of the Prophet (PBUH) an offence punishable by death or life imprisonment, it is likely that an apostate would suffer the same penalty.
7. **Sexual relations outside marriage:** The second most serious *hadd* offence is that of *zina*. The offence therefore can either be the committing of adultery or fornication. The punishment for a person found guilty of *zina* who has at any time been married is death by stoning. In the case of a person who has never been married the punishment is a hundred lashes. To prove the *hadd* offence of *zina* the testimony of four adult, sane, male, Muslim eyewitnesses of the act of intercourse itself is required. Guilt may also be established by the confession of the accused, which must be maintained until punishment is carried out.

ISLAMIC PERSPECTIVE ON GENDER-BASED AND HONOUR CRIMES

In many countries of the Muslim world where Islamic criminal law does not apply, gender-based crimes have been wrongfully justified in the name of Islam. There are also provisions in the state law to justify so-called honour killings. It should be noted that there are no provisions in Islamic Law that justify honour killings. Honour killings are more a matter of tribal customs and the tribal customary belief that 'the honour of the tribe rests in its women'. Similarly, there is no law in Islam which justifies domestic violence. Islam also prohibits forceful marriage of a female as well as a male against their will.

THE OBJECTIVES OF THE ISLAMIC PENAL SYSTEM

Prevention of Crime

Islam seeks to protect society from the dangers of crime. Islam seeks to make social stability and security widespread, making life in society secure and peaceful. It has made this consideration a platform for action, legislating punishments that will discourage crime.

Reforming the Criminal

Islam seeks to reform the criminal. The Quran often makes mention of repentance in association with the crimes that it deals with, making it clear that the door to repentance is open whenever the criminal abandons his or her sinful or criminal lifestyle and behaves properly.

Compensation for the Victim

The punishment is a recompense for the crime. The criminal should receive his just recompense as long as he is pleased with taking the path of evil instead of the path of righteousness. It is the right of society to be secure in its safety and the safety of its individual members.

ISLAMIC LAW AND SITUATION IN PAKISTAN

Pakistan has introduced Islamic penal law for certain types of offences, for instance unlawful sexual intercourse. Pakistan introduced Islamic criminal law in 1979 in the form of three Ordinances, which are collectively referred to as the Hudood Ordinances. They are the:

- Offences against Property (Enforcement of Hudood) Ordinance, 1979
- Offence of Zina (Enforcement of Hudood) Ordinance, 1979
- Offence of Qazf (Enforcement of Hadd) Ordinance, 1979

In 2006, the Protection of Women (Criminal Law Amendment) Act was enacted in Pakistan. First, the 2006 Act returns a number of offences from the Zina Ordinance back to the Pakistan Penal Code. The offence of kidnapping or abducting a woman in order to compel her to marry against her will or to force her into illicit sexual intercourse, or kidnapping a male in order to subject him to 'unnatural lust', or selling a person for the purpose of prostitution, have now been reinserted into the Pakistan Penal Code of 1860.

Also, the offence of rape has been returned to the penal code. The offence of rape is so defined that marital rape becomes a criminal offence. Sexual intercourse with a female below the age of 16, even with her consent, is defined as rape.

The law of Pakistan now expressly recognizes honour crimes as criminal offences. The amended Article 311 of the penal code provides a mandatory sentence of 10 years' imprisonment if the offence is committed in the name of, or on the pretext of, honour.

CONCLUSION

Although criminal law in other legal systems tends to be organized according to the nature of crimes, criminal offenses under classical Islamic law are categorized according to the nature and sources of punishments. Like all the other penal systems of the world, the Islamic penal system aims to establish a just society. In many aspects, the Islamic Law and modern law coincide. However, the Islamic penal system is unique in the sense that the inner deterrent of man, that is, his moral conscience is woven fully into the fabric of external supervision. Islam wants to protect the society from the dangerous impacts of crime; seeks to reform the criminal and also recompenses the victim. The individual is not marginalized for the sake of society and its priority is the protection of the rights of an individual.

QUESTION 7

JUVENILE DELINQUENCY

Q. What is juvenile delinquency? Explain the nature, extent and causes of juvenile delinquency in Pakistan. Suggest remedial measures for reducing juvenile delinquency in Pakistan. (CSS-2018)

Q. Causes of juvenile delinquency in Pakistan. (Short Note CSS-2017)

ANSWER

INTRODUCTION

According to Pakistan's Juvenile Justice System Act 2018, juvenile delinquency refers t antisocial and criminal behaviour committed by persons under the age of 18. Moreover, juvenil delinquency is also simply called delinquency, and the two terms are used interchangeably in popula discourse. Once persons reach adulthood, antisocial and criminal behaviour is known as crime. In thi way, juvenile delinquency is the child and adolescent version of crime. The term criminal is not use for juveniles in order to protect them from criminal labelling.

NATURE AND TYPES OF JUVENILE DELINQUENCY

Juvenile delinquency encompasses two general types of behaviours, status and delinquen offences. Status offences are behaviours that are considered inappropriate or unhealthy for childre and adolescents, and the behaviours are proscribed because of the young age of the offender. Suc behaviours, if committed by adults, are not illegal. Examples of status offenses include smoking o using tobacco, running away from home, truancy or nonattendance at school. On the other hand juvenile delinquency is the violation of laws that also apply to adults in the criminal justice system. Delinquent offences include theft, robber, rape, murder, drug abuse, terrorism, white-collar and cyber-crime among others.

IMPORTANCE OF STUDYING JUVENILE DELINQUENCY

Juvenile delinquency is important in society for several reasons:

1. Firstly, research has shown that chronic criminal offenders, nearly all of whom began thei career as serious juvenile delinquents. Many gangsters and drug deals began their crimin careers as juvenile offenders.
2. Secondly, children and adolescents commit a significant amount of delinquent offences th result in violent, property, or other forms of victimization. Each year, more than one millio children and adolescents are arrested by police for their delinquent acts.
3. Thirdly, juvenile delinquency is itself seen as an indicator of the general health an prosperity of a society. In neighbourhoods with high levels of delinquency, the antisoci behaviour is seen as part of a larger set of social problems.
4. Fourthly, juvenile delinquency has different meanings depending on its severity and oth factors. For many young people, juvenile delinquency is a fairly normal facet of growin up. For a small group of youths, however, juvenile delinquency is simply the beginnin stage of what will become a lifetime of antisocial behaviour.

GENERAL CAUSES OF JUVENILE DELINQUENCY

1. Poverty erodes away morality and some children commit crime to secure some money.
2. Illiteracy is another cause because for an illiterate child, it becomes hard to understand a avoid criminal incentives.
3. Child labour is another cause of crime because it exposes children to the problems and ev of society at a very early age.
4. Criminal peers may also lead some juveniles to commit crime.
5. Parenting also influences children's behaviour. Issues in parenting may also lead children t engage in criminal behaviour. Major parenting issues include:

- **(a)** Uneducated parents
- **(b)** Lack of understanding between father and mother
- **(c)** Lack of communication between parents and children
- **(d)** Both working parents and lack of supervision of children
- **(e)** Broken or divorced families

6. Criminal Labelling of juvenile offenders by society.

THEORETICAL CAUSES OF JUVENILE DELINQUENCY

For more than two centuries, academic criminologists have developed a host of theories to explain juvenile delinquency. The major difference among them relates to the academic discipline in which the theorist was trained. The various disciplines, such as economics, psychology, and sociology, have differing assumptions about humans and human behaviour, and these result in different conceptualizations about what causes juvenile delinquency. This theoretical angle examines theories of juvenile delinquency from the perspective of economics, psychology, and—the most common theoretical approach—sociology.

CLASSICAL OR RATIONAL APPROACH TO JUVENILE DELINQUENCY

Some of the earliest theories of juvenile delinquency were economic in their perspective. Economic theories are known as classical theories or rational theories. They generally state that juveniles are rational, intelligent people who have free will, which is the ability to make choices. Young people calculate the costs and benefits of their behaviour before they act. Delinquency is the result of juveniles imagining greater gains coming from breaking the law than from obeying it.

BIOLOGICAL CAUSES OF JUVENILE DELINQUENCY

1. The Body Type theories suggest that some children are born criminals. Body Type theory says that muscular and unusual bodily features determine children's tendency to commit crime.
2. The Extra Y Chromosome theory says that presence of extra Y chromosome in a male increases his chances of getting involved in violent crimes.
3. Low Intelligence Theory suggests that juvenile criminals are with low IQ level.

PSYCHOLOGICAL CAUSES OF JUVENILE DELINQUENCY

Psychological theories explain juvenile delinquency with individual-level constructs that exist inside of all people and interact with the social world.

1. B. F. Skinner's Behavioural Theory proposes that children's behaviour is the result of the consequences it produces. He concluded that children and adolescents repeat rewarded behaviour and terminate punished behaviour.
2. Albert Bandura's Learning Theory argues that juveniles learn criminal behaviour from imitation and modelling. Children learn criminal behaviour from observation.
3. Sigmund Freud's Psychodynamic Theory says that the unconscious part of human brain determines human behaviour and similarly criminal behaviour is also determined by unconscious. Children who do not transition from 'id' to 'ego' are also prone to get involved in violent crimes.
4. Theory of Psychopathy says that the psychopath children are antisocial and insensitive and these tendencies can become the causes of crime.

SOCIOLOGICAL THEORIES OF JUVENILE DELINQUENCY

Sociological theories of juvenile delinquency point to societal factors and social processes that in turn affect human behaviour. Unlike other explanations, sociology explains people's behaviour using characteristics beyond the individual. Mostly, sociological theories assert that certain negative aspects of neighbourhoods and society in general serve as structural inducements for young people to resort to juvenile delinquency. In this way, sociological theories tend to ignore or deny individual-level psychological differences that might partially explain who engages in delinquency.

1. Social Disorganization Theory says that socially disorganized areas with poor neighbourhood, cultural conflict and lack of rule of law increase chances of children's of getting involved in criminal behaviour. For example, many children in Liyari, a disorganized area in Karachi, became part of gangs and eventually got involved in criminal behaviour.
2. Merton's Strain theory suggests that pressure of cultural goals like money lead juveniles to adopt illegal means to achieve these goals. Such juveniles become innovators and may engage in crimes like theft and street crime.
3. Sutherland's Differential Association Theory proposes that criminal behaviour is not inherited and that juveniles learn to commit crime in their intimate groups like family and peers.
4. Labelling Theory asserts that juveniles commit crime when society permanently labels them as criminals like thief and drug addict. These labels affect the self-perception of a child and the child may start thinking bout himself or herself as a potential criminal.
5. Hirschi's Control Theory asserts that weakening of social bonds like **attachment** with family, school and peers lead children towards criminal lifestyle. Lack of **commitment** to cultural goals and lack of **involvement** in conventional activities like education and sports also become causes of juvenile delinquency. Absence of **belief** in religion or moral values also increases chances of juvenile's criminal behaviour.

REMEDIES OR SUGGESTIONS TO CONTROL JUVENILE DELINQUENCY

Children are the real asset of any nation. Therefore, it is very important to control or prevent children from getting involved in crime. There can be multiple ways of controlling children from getting involved in criminal behaviour. The Juvenile Justice System Ordinance (JJSO), 2000 and then its amended version Juvenile Justice System Act (JJSA), 2018 are in place to deal with juvenile offenders. But the state and society also needs to take certain measure to prevent juvenile delinquency.

The state and society can pursue a comprehensive strategy to control juvenile delinquency. It is guided by 10 principles:

1. Strengthening the family in its primary responsibilities to instill moral values and provide support and guidance to children.
2. Supporting core social institutions, such as schools, *masajid*, and social organizations to help develop capable, mature, and responsible youth.
3. Promoting 'delinquency prevention' as the most cost-effective approach to reducing juvenile delinquency.
4. Intervening immediately and effectively when delinquent behaviour first emerges to prevent it from becoming worse.

5. Establishing a system of graduated sanctions that holds each juvenile offender accountable, protects public safety, and provides programmes and services that meet treatment needs.
6. Identifying and controlling the small percentage of serious, violent, and chronic juvenile offenders who commit the majority of felony offenses.
7. Implementation of anti child labour laws.
8. Ensuring basic education for out-of-school children.
9. Awareness or training programmes of Parents about parenting patterns.
10. Discouragement of criminal labelling of juvenile offenders as thieves, robbers or drug addicts.
11. Providing sports and other recreational facilities to children.

CONCLUSION

Juvenile delinquency is a tremendous burden on society, and the most antisocial youths impose staggering costs in terms of victimization and correctional programmes. Moreover, juvenile delinquency also damages a juvenile's future life. Families of the juvenile offenders in Pakistan also suffer the legal problems as well as social stigma. Therefore, the State and society need to take swift and effective measures to save the children from falling a prey to criminal life style.

QUESTION 8

JUVENILE JUSTICE SYSTEM

Q. **Discuss some of the functions and responsibilities of Juvenile Justice System. Do you believe that Juvenile Justice has played its role in prevention of juvenile crimes in Pakistan? (CSS-2019)**

Q. **Write a comprehensive note on the Juvenile justice system of Pakistan. Suggest measures for the improvement of Juvenile justice system of Pakistan. (CSS-2017)**

ANSWER

INTRODUCTION

The Juvenile Justice System is primarily responsible for dealing with juveniles who commit crimes (delinquents) and those who are incorrigible, truants, runaways, or unmanageable (status offenders). The policy of treating juveniles who commit criminal acts separately from adults is relatively new. Until the late 19th century, youthful criminals were tried in adult courts and punished in adult institutions. However, 19th century reformers, today known as "child savers," lobbied to separate young offenders from serious adult criminals. Pakistan ratified the UN Convention on the Rights of the Child (UNCRC) in 1990. However, since then the process of policy making, legislation and implementation of juvenile laws in Pakistan has remained slow and uneven.

INTERNATIONAL AND PAKISTAN'S LAW REGARDING CHILDREN

The UN Convention on the Rights of the Child (UNCRC) says that

1. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
2. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
3. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
4. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

In light of the above, and pursuant to Article 25(3) of the Constitution of Pakistan, 1973, Pakistan is under an obligation to safeguard and protect the rights of children. With this backdrop in mind, it is crucial that laws relating to juveniles should be focused on disposal of cases through diversion and social-integration of juvenile offenders and for a law to provide specific procedures to carry out the same so that these processes can be carried out in an effective manner and in the best interest of the child. The Juvenile Justice System Act (**JJSA**), 2018 has been promulgated to deal with these issues and its predecessor the Juvenile Justice System Ordinance (**JJSO**) 2000 has thereby been repealed.

JUVENILE JUSTICE SYSTEM ACT (JJSA), 2018

JJSA 2018 overcomes the shortcomings which were present in JJSO 2000, and provides a much better system for criminal justice and social reintegration for juvenile offenders. The Act defines a child according to the definition of UNCRC as 'a person who has not attained the age of eighteen years'.

JJS Act, 2018 classifies the criminal offences into following three different categories:

1. **Minor**, which means an offence for which maximum punishment under the Pakistan Penal Code, 1860 is imprisonment for up to three years with or without fine. A juvenile is entitled to bail in minor offences, with or without surety bonds by Juvenile court.
2. **Major**, which means an offence for which punishment under the Pakistan Penal Code, 1860 is imprisonment of more than three years and up to seven years with or without fine. Bail shall also be granted in major offences with or without surety bonds by Juvenile court.
3. **Heinous**, which means an offence which is serious, brutal, or shocking to public morality and which is punishable under the Pakistan Penal Code, 1860 with death or imprisonment for life or imprisonment for more than seven years with or without fine. A juvenile of less than sixteen years of age is entitled to bail in heinous offences, but a bail is on discretion of court if juvenile is more than sixteen years of age.

SALIENT FEATURES OF JUVENILE JUSTICE SYSTEM OF PAKISTAN

The Juvenile Justice System of Pakistan is governed by the JJSA 2018. The JJSA 2018 is very different from JJSO 2000, and the following are some of its salient new features:

1. **Determination of Age:** JJS Act, 2018 makes it compulsory upon the ranking officer-in-charge, or the investigation officer, to make an enquiry to determine the age of any such alleged offender, who physically appears or claims to be a juvenile. Age shall be determined on basis of accused person's birth certificate, educational certificates or any other pertinent documents. In absence of such documents, age of such accused person may be determined on the basis of a medical examination report by a medical officer.
2. **Right to Free Legal Assistance:** Every juvenile or child victim of an offence shall have the right of legal assistance at the expense of the State. A juvenile shall be informed about his right of legal assistance within 24 hours of taking him into custody. Pro bono legal assistance is usually provided to juveniles in Pakistan in some of the cases, mostly in big cities only.
3. **Keeping the Juveniles in Observation Home:** This means a place where a juvenile is kept temporarily after being apprehended by police as well as after obtaining remand from juvenile court or otherwise for conducting inquiry or investigation. Observation Homes shall be made separately from police stations. So far many juvenile accused are kept in police stations in Pakistan. They intermingle with the adult offenders and this exposes them to the world of crime.
4. **Separate Challan and Trial of Juvenile Offenders in Juvenile Court:** The criminal case against a juvenile offender shall be pursued in a juvenile court. A juvenile shall not be charged with and tried for an offence together with an adult person. But if it is in the interests of justice to hold a joint trial of a juvenile and an adult, the juvenile court may dispense with the physical presence of the juvenile and they may be allowed to join the Court proceedings through audio-visual technology link.
5. **Time-bound Decisions:** The JJSA 2018 also binds the law enforcement agencies and courts to decide the juvenile cases within six months. But this limit is rarely followed in Pakistan.
6. **Juvenile Rehabilitation Centres:** This is a special kind of prison established exclusively for keeping juvenile offenders. The convicted juvenile shall be confined to the premises till the completion of period of imprisonment or until they turn 18 years of age. Here convicts can receive an education as well as vocational or technical training for their development and includes certified institutions including women crises centres.

Pakistan lacks Juvenile Rehabilitation Centres where juveniles can be reformed and rehabilitated so that they can reintegrate and become normal part of society again.

Currently, Punjab has two functioning Borstal Institutions or Juvenile Jails in Faisalabad and Bahawalpur. It has been observed that both these facilities have been staffed with officials who are unequipped and untrained to deal with juvenile offenders. These jails lack adequate sanitation, hygiene and clean drinking water facilities.

Sindh has set up four Youthful Offenders Industrial Schools (YOISs) – in Karachi, Sukhur, Larkana and Hyderabad. They are housing fewer prisoners than their authorized capacity. Additional, Sindh has one Remand Home (kind of observation home) in Karachi. But the population and crime rate of Karachi demand more such facilities.

Both the KPk and Balochistan are yet to establish a functioning Rehabilitation Centres for juveniles.

7. **Disposal of Cases through Diversion:** This is an alternative process of determining the responsibility and treatment of a juvenile on the basis of his social, cultural, economic, psychological and educational background, without resorting to formal judicial proceedings. The complaint against a juvenile shall be referred to the Juvenile Justice Committee for disposal through diversion.

For example in the US Juvenile Justice System, Juvenile Diversion keeps kids out of court and away from crime:

> *"The Juvenile Diversion programmes is a way for juvenile offenders to have their case heard in an informal setting, rather than in a courtroom. Part of the court's Partnership for Youth Justice, the diversion programmes has found success on the Eastside and in the greater Seattle area."*

(a) **Compoundable Offences:** All offences, either minor or major, shall be compoundable for purpose of diversion. For major offences, diversion can only be exercised if the age of the juvenile is not more than 16 years.

(b) **Juvenile Justice Committee:** This shall dispose of cases through diversion within a period of one month from the date of the referral. The Committee shall dispose of a case with consent of the complainant by resorting to different options, including restitution of movable property, reparation of the damage caused, written or oral apology, participation in community service, payments of fine and costs of the proceedings, placement in juvenile rehabilitation centre and written and oral reprimand. If the offence has been committed against a State and not against an individual the Committee may dispose of the case through diversion with consent of the concerned public prosecutor. The Committee shall also perform inspection of Observation Homes and Juvenile Rehabilitation Centres and may give directions to concerned persons for welfare and social re-integration of juveniles kept in these places.

The J. J. Committee is set to consist of four members, including a serving Judicial Magistrate (Head of Committee), District Public Prosecutor, Member of local Bar having at least 7 years experience, appointed by the concerned Sessions Judge for a period of 2 years, and serving probation officer or social welfare officer not below BPS-17. One thing that is missing is the presence of a qualified child rights activist that understands the plight of the underage victims, and is equipped to deal with their issues.

The JJSA says that Juvenile Justice Committee are to be formed ***within three months*** of the enactment of JJSA and are to be established for each Sessions Court at each district. The Committee will have the power to dispose of cases through diversion upon referral from

Police, the Prosecution or the Juvenile Court within one month from the date of referral. The JJC will also inspect the offender's residential location and rehabilitation centres and will give directions to the officers in charge. Monitoring of the welfare, rehabilitation and social integration of the juvenile offenders is also included in functions of JJC.

8. **Penalty for Disclosure of Identity and Case Proceedings:** JJS Act, 2018 exclusively bars revealing the identity of an accused juvenile to the public without the authorisation in writing of the juvenile or their next - of - kin. The S.H.O., investigating officer or the juvenile court can also grant permission in this regard.
9. **Special Provisions for Female Juveniles:** Female juveniles shall not in any circumstances be apprehended or investigated by a male police officer or released on probation under supervision of a male officer. A female juvenile shall only be kept in a Juvenile Rehabilitation Centre established or certified exclusively for female inmates.
10. **No Disqualification Attached with Conviction:** A juvenile offender convicted under the provisions of JJS Act, 2018 shall not suffer a disqualification, if any attaching to a conviction of an offence under such law.
11. **Preventive Detention:** No child shall be arrested under any of the laws dealing with preventive detention or under the provisions of chapter VIII of the Code of Criminal Procedure.

STATISTICS OF JUVENILE OFFENDERS IN PAKISTAN

Juvenile Offenders in Detention

Year	Under-trial prisoners	Convicted prisoners	Total
2003	2523	537	3060
2004	2100	439	2539
2005	2005	363	2368
2006	2035	231	2266
2007	1810	205	2015
2008	1635	153	1788
2009	1225	132	1357
2010	1074	151	1225
2011	1267	165	1432
2012	1219	179	1398
2013	1315	183	1498
2014	1354	285	1456
2015	-	-	-
2016	1097	128	1225
2017	1085	113	1198
Till January 2019	1081	118	1199

PROVINCE AND GENDER-WISE JUVENILE OFFENDERS

	Juvenile under-trial prisoners		Juvenile convicted prisoners		
Province	**Male**	**Female**	**Male**	**Female**	**Total**
Punjab	496	14	72	0	582
Sindh	175	0	6	0	181
Khyber Pakhtunkhwa	345	2	36	0	383
Balochistan	49	0	4	0	53
Total	1,065	16	118	0	1,199
Grand Total:					**1,199**

CRITICAL ANALYSIS OF JUVENILE JUSTICE SYSTEM ACT OF PAKISTAN

Before delving into the merits of JJSA, it is first important to highlight the legal challenges that arose out of the operation of the JJSO. A common issue under JJSO was determining whether a juvenile court would have jurisdiction if a juvenile has committed a terrorism offence or an anti-terrorism court (ATC)? A perusal of case law under JJSO shows that there are two category of cases. One category of cases states that if a juvenile has committed a terrorism offence, an ATC shall have jurisdiction to try the case, whereas, the second category states that even if a juvenile has committed an offence under Anti-terrorism Act (ATA), it should be tried by a juvenile court and especially in relation to offences falling under items 1 and 3 of the third schedule of ATA. The first category of cases was also strengthened by the fact that Section 14 of the JJSO did not curtail or limit the power of anti-terrorism courts pertaining to a child's trial but clarifies that the provisions of the Ordinance shall be in addition to and not in derogation to any other law for the time being in force. Furthermore, Section 21-G of the ATA states that all offences under this Act shall be tried (exclusively) by Anti-Terrorism Court established under this Act. Therefore, this lack of clarity became an issue when determining whether a special court such as an anti-terrorism court (ATC) or a narcotics court shall have jurisdiction over a juvenile court.

JJSA has attempted to deal with this issue. Section 23 of the Act states that the provisions of the law will have an overriding effect notwithstanding anything contained in any other law for the time being in force. However, further clarity will still be needed in light of Section 21-G of the ATA and especially in relation of offences, which fall under items 2 and 4 of the third schedule of the ATA.

Furthermore, JJSA distinguishes between minor and major offences and both of these are treated as bailable offences for the purpose of acquiring bail. In relation to investigation of a juvenile, a juvenile shall not be interrogated by a police officer below the rank of a sub-inspector and the investigation officer designated shall be assisted by a probation officer or by a social welfare officer notified by the Government to prepare social investigation report to be annexed with the report prepared under section 173 of the Cr.P.C. But perhaps the most welcome change that has been brought about by the JJSA is the disposal of cases through diversion in Section 9 of the Act. The Act aims to establish juvenile justice committees in each district, which shall dispose of cases, with the consent of the accused by resorting to different modes of diversion including: restitution of movable property, reparation of the damage caused, written or oral apology, participation in community service, payments of fine and costs of the proceedings, placement in Juvenile Rehabilitation Centre, and written and oral reprimand. This is in the case where the complainant is not a state functionary. Additionally, Section 17 of the Act provides safeguards for female juveniles. The act states that no female juvenile shall in any circumstance be apprehended or investigated by a male officer or released on probation under supervision of a male officer. A female juvenile shall only be kept in a Juvenile Rehabilitation Centre established or certified exclusively for female inmates. Additionally, the Act provides for a penalty for disclosing the identity of a juvenile and also provides for the making of rules under the Act to implement the same.

These provisions will go a long way in re-integrating delinquent juveniles into society and improving Pakistan's compliance with international human rights, standards. However, all this depends on proper implementation of these provisions. Lack of implementation of key provisions of JJSA 2018 will ultimately render the legislation ineffective and will deprive young offenders from their constitutional right of fair trial.

NEW HANDBOOK OF UN OFFICE ON DRUGS AND CRIME (UNODC) 2018

> In 2018, the UN Office on Drugs and Crime (UNODC) issued a new handbook dealing with an emerging category of juvenile offenders: children forcibly recruited by terrorists and violent extremist groups. The UNODC Director, Division for Treaty Affairs, John Brandolino, said: "The world has been forced to face the reality that terrorists and violent extremist groups target children for their purposes".
>
> "The rise of terrorist and violent extremist groups has proved particularly problematic for justice systems around the world, with the underlying concern at the core of this UNODC publication being how States can preserve public safety and, at the same time, effectively protect the rights of the children involved in these groups."
>
> "The handbook, which addresses policy-makers and practitioners dealing with children, seeks to tackle the issue at three levels: by looking at methods to prevent the recruitment of children by terrorists and violent extremist groups; by identifying effective justice responses to children recruited and exploited by such groups, whether they are in contact with the justice system as victims, witnesses or alleged offenders; and by promoting the rehabilitation and reintegration of such children."

SUGGESTIONS/RECOMMENDATIONS/REMEDIES TO REFORM JUVENILE JUSTICE

1. Where there are no documentation proof of age, the federal and provincial government need to establish and implement as effective age determination mechanism, using variou modern scientific and technological tools such as DNA and Bone Density tests.
2. The JJSA 2018 should be further strengthened and the lacunae and gaps in articles lik Sections 4, 6, 6(4) 12 and 15 need to be revisited.
3. The JJSA 2018 Rules need to be notified on an urgent basis.
4. Establish new and exclusive Juvenile Courts, Police Investigation, Probation, Prosecutio Detention, Prison facilities and Parole staff as well as psychologists and social workers t deal with the juvenile offenders.

5. The Juvenile Courts, Police Investigation, Probation, Prosecution, Detention, Prison and Parole staff as well as psychologists and social workers need to be sensitized and trained to follow and implement the provisions of JJSA 2018.
6. The government needs to establish the Juvenile Justice Committees (JJCs) at all tiers of governance, especially at the district level in order to increase juvenile's access to out-of-court dispensation of cases.
7. As per the JJSA 2018, the government need to establish Juvenile Rehabilitation Centres and also promote other alternative measures to incarceration such as diversion, probation, mediation, counselling and education, parole and community service.
   The Government of Balochistan needs to establish its first Juvenile Rehabilitation Centre and then gradually establish one JRC in each district.
   The Government of KPk also needs to transform the Bannu and Haripur Borstal Institutions into model Juvenile Rehabilitation Centres and then establish one JRC in each district.
   The governments of Punjab and Sindh also need to establish one JRC in each district.
   Moreover, all provinces need to equip these JRCs with trained staff and basic minimum needs like clean drinking water and sanitation.
8. The State should ensure that for juvenile offenders, imprisonment is used as a last resort and for shorter spans.
9. Where imprisonment becomes unavoidable, the juvenile prisoner must no be detained with adult prisoners.
10. The is also need of recruitment of gender-balanced staff at all levels of Juvenile Justice System in Pakistan namely in Police, Courts, Probation, Rehabilitation Centres, Parole officers, psychologists and social workers. It may decrease the chances of sexual harassment of juvenile offenders.
11. FIRs involving juveniles must be registered with due diligence, honesty and integrity. Special care must be ensured in cases involving female juvenile since they are one of the most voiceless and victimized sections of society.
12. Probation must be widely used in cases involving juvenile offenders. The Directorate of Reclamation and Probation (DRP) needs to be strengthened for this purpose.
13. The media must also highlight the plight and issues of children in Pakistan. The print and electronic media also need to report lack of Juvenile Justice Committees and Rehabilitation Centres and monitor the implementation and performance of Juvenile Justice System Act of Pakistan.
14. The fundamental Right to Education for all children enshrined in Article 25-A of Pakistan's Constitution needs to be adhered to and out-of-school children need to be facilitated and incentivized for education.

SIMILARITIES AND DIFFERENCES BETWEEN JUVENILE AND ADULT JUSTICE SYSTEMS

1. Similarities

(a) Police officers, judges, and correctional personnel use discretion in decision making in both the adult and the juvenile systems.

(b) The right to receive Miranda warnings applies to juveniles as well as to adults.

(c) Juveniles and adults are protected from prejudicial line-ups or other identification procedures.

(d) Similar procedural safeguards protect juveniles and adults when they admit guilt.

(e) Prosecutors and defense attorneys play equally critical roles in juvenile and adult advocacy.

(f) Juveniles and adults have the right to counsel at most key stages of the court process.
(g) Pre-trial motions are available in juvenile and criminal court proceedings.
(h) Negotiations and plea bargaining exist for juvenile and adult offenders.
(i) Children and adults have the right to a hearing and an appeal.
(j) The standard of evidence in juvenile delinquency adjudications, as in adult criminal trials, is proof beyond a reasonable doubt.
(k) Juveniles and adults can be placed on probation by the court.
(l) Juveniles and adults can be kept in detention without bail if they are considered dangerous.
(m) After trial, juveniles and adults can be placed in community treatment programs.

2. Differences

(a) The primary purpose of juvenile procedures is protection and treatment. With adults, the aim is to punish the guilty.
(b) Age determines the jurisdiction of the juvenile court. The nature of the offense determines jurisdiction in the adult system.
(c) Juveniles can be apprehended for acts that would not be criminal if they were committed by an adult (status offenses).
(d) Juvenile proceedings are not considered criminal; adult proceedings are.
(e) Juvenile court procedures are generally informal and private. Those of adult courts are more formal and are open to the public.
(f) Courts cannot release identifying information about a juvenile to the media, but they must release information about an adult.
(g) Parents are highly involved in the juvenile process but not in the adult process.
(h) The standard of arrest is more stringent for adults than for juveniles.
(i) Juveniles are released into parental custody. Adults are generally given the opportunity for bail.
(j) Juveniles have no constitutional right to a jury trial. Adults have this right.
(k) Juveniles can be searched in school without probable cause or a warrant.
(l) A juvenile's record is sealed when the age of majority is reached. The record of an adult is permanent.
(m) A juvenile court cannot sentence juveniles to county jails or state prisons; these are reserved for adults.
(n) There is no death penalty in the juvenile justice system. A juvenile under age 18 when he or she committed the crime cannot be executed even if the case is waived to adult court.
(o) A juvenile waived to the adult court cannot get a life sentence without parole unless he or she is convicted of first degree murder.

CONCLUSION

2018 saw a positive development in Pakistani legislation, namely the JJSA 2018, which seeks to improve the state of juvenile offenders, with a focus on their rehabilitation and better access to justice mechanisms. But in spite of these efforts, it was evident that the Juvenile Justice System continued to face challenges, primarily due to weak implementation mechanisms, inadequate infrastructure, chronic shortages of financial and human resources, and, above all, the absence of political will and commitment required to focus on juvenile justice issues.

QUESTION 9

(a) CRIMINAL JUSTICE SYSTEM

(b) PUNITIVE AND REFORMATIVE TREATMENT OF CRIMINALS

Q. Write a note on Crime Control Agencies. (CSS-2016)

Q. What is meant by Criminal Justice System? Briefly discuss the history and organs of criminal justice system of Pakistan.

Q. What are the different models or perspectives about the reformation and punishment of offenders in the criminal justice system?

re-offending by the criminal. Parole is hardly used in Pakistan and that is why many prisoners involved in minor crimes are unable to avail this option of early re-integration into the society.

In sum, social control and crime control functions are performed by multiple agencies at multiple levels. The informal agencies of crime control tend to prevent crime in an indirect manner. On the other hand, the formal agencies investigate, hold trial, convict or acquit the accused. They provide justice to the accused as well as the complainant.

GOALS AND OBJECTIVES OF CRIMINAL JUSTICE SYSTEM

The public relies on the agencies of the criminal justice system to provide solutions to the crime problem and to shape the direction of crime policy. This loosely organized collection of agencies is charged with, among other matters, maintaining social control, protecting the public, preventing crime, preserving order, enforcing the law, identifying transgressors, bringing the guilty to justice, treating criminal behaviour, and administering justice in a fair and even-handed manner.

CRIMINAL JUSTICE SYSTEM IN PAKISTAN

Criminology as an academic discipline and as a profession doesn't enjoy its deserved status in Pakistan. There is a general apathy on part of the academics and practitioners to promote the scientific study of criminology. Moreover, the criminal justice system in Pakistan is a colonial remnant and is unable to meet the challenges of the rising crime rate and the associated complexities involved in the dispensation of justice.

There is a great deal of controversy over the nature and purpose of justice. Some view the goal of justice as social control, while others view it as a mechanism of redemption and restoration. Consequently, a major objective of policymakers is to formulate and disseminate effective models of crime prevention and control. Efforts are now being undertaken at all levels of the justice system to improve information flow, experiment with new programmes concepts, and evaluate current operating procedures.

CRIMINAL JUSTICE SYSTEM AS A PROCESS

In addition to viewing the criminal justice system as a collection of agencies, it is possible to see it as a series of decision points through which offenders flow. This process begins with initial contact with police and ends with the offender's re-entry into society. At any point in the process, a decision may be made to drop further proceedings and allow the accused back into society without additional penalty. To justice expert Herbert Packer, this process is similar to an assembly line conveyor belt, down which moves an endless stream of cases, never stopping. According to this view, each of the stages of justice is actually a decision point in which cases are removed from the system or continued on the journey to formal resolution with a conviction and sentencing. For example, at the investigatory stage, police must decide whether to pursue the case or terminate involvement because there is insufficient evidence to identify a suspect, the case is considered trivial, the victim decides not to press charges, and so on. At the bail stage, a decision must be made whether to set bail so high that the defendant remains in custody, to set a reasonable bail, or to release the defendant on his or her own recognizance without requiring any bail at all. Each of these decisions can have a critical effect on the defendant, the justice system, and society. If an error is made, an innocent person may suffer or a dangerous individual may be released to continue to prey upon society.

THE STEP-BY-STEP APPROACH

1. Initial contact with Police or other law enforcement agencies
2. Arrest

3. Preliminary Investigation
4. Appearance before a Magistrate
5. Bail or detention
6. Remand and custody
7. Investigation and Interrogation
8. Submitting of Challan and Indictment or framing of charges
9. Arraignment
10. Prosecution and Defense
11. Probation
12. Court verdict: conviction or acquittal
13. Correction: fine, imprisonment, parole
14. Release
15. Post-conviction after-care

(b) Punitive and Reformative Treatment of Criminals

INTRODUCTION

There has been a lot of debate about the treatment of offenders through the criminal justice system: whether they should be punished or rehabilitated. How should criminal justice system function? What should be the process and the motive? There are different models or perspectives of criminal justice system given by different philosophers and criminologists.

1. Crime Control Model

Those espousing the crime control model believe that the overriding purpose of the justice system is to protect the public, deter criminal behaviour, and incapacitate known criminals. Those who embrace its principles view the justice system as a barrier between destructive criminal elements and conventional society. Speedy, efficient justice—unencumbered by legal red tape and followed by punishment designed to fit the crime—is the goal of advocates of the crime control model. Its disciples promote such policies as increasing the size of police forces, maximizing the use of discretion, building more prisons, using the death penalty, and reducing legal controls on the justice system.

According to this crime control model, **punishment** is critical because it symbolizes the legitimate social order and the power societies have to regulate behavior and punish those who break social rules.

> *The crime control model is rooted in choice theory. Fear of punishment is viewed as the primary deterrent to crime. Because criminals are rational and choose to commit crime, it stands to reason that their activities can be controlled if the costs of crime become too high. Swift, sure, and efficient justice is considered an essential element of an orderly society.*

2. Equal Justice Model

At its core, the equal justice model asserts that all people should receive the same treatment under the law. Efforts to distinguish between criminal offenders and create a system of individualized treatment creates a sense of unfairness that undermines the goals of the system. Frustration arises when two people commit the same crime but receive different sentences or punishments. The resulting

QUESTION 10

POLICE

Q. What are the functions of police? Discuss the problems and issues in police system of Pakistan and also suggest remedies to reform the police.

Q. The efforts at Reforms in Police System have been ill-founded so far. Discuss.

ANSWER

Quaid's Quote

"Do your duty as servants to the people and the State, fearlessly and honestly. Service is the backbone of the State. Governments are formed, governments are defeated, Prime Ministers come and go. Ministers come and go, but you stay on, and, therefore, there is a very great responsibility placed on your shoulders."

(Address to Civil Officers In Peshawar, 14th April 1948)

INTRODUCTION

Police departments are those public agencies created to maintain order, enforce the criminal law, provide emergency services, keep traffic on streets and highways moving freely, and develop a sense of community safety. Pakistan's good governance; its justice, law and order situation; its peace and prosperity in life of its citizens; its fight against terrorism and corruption; its goal to achieve rule of law and enforcement of law and its mission to eradicate numerous social evils, from drug addiction to heinous crime of child abuse, depends primarily on police department. But unfortunately, torture during investigation and other privately-run torture cells, extrajudicial killings, and a general lack of empathy for the public seem to largely define Pakistan's police system. The police forces also themselves face many challenges and problems which hinder their performance. Once Mary Frances Berry said:

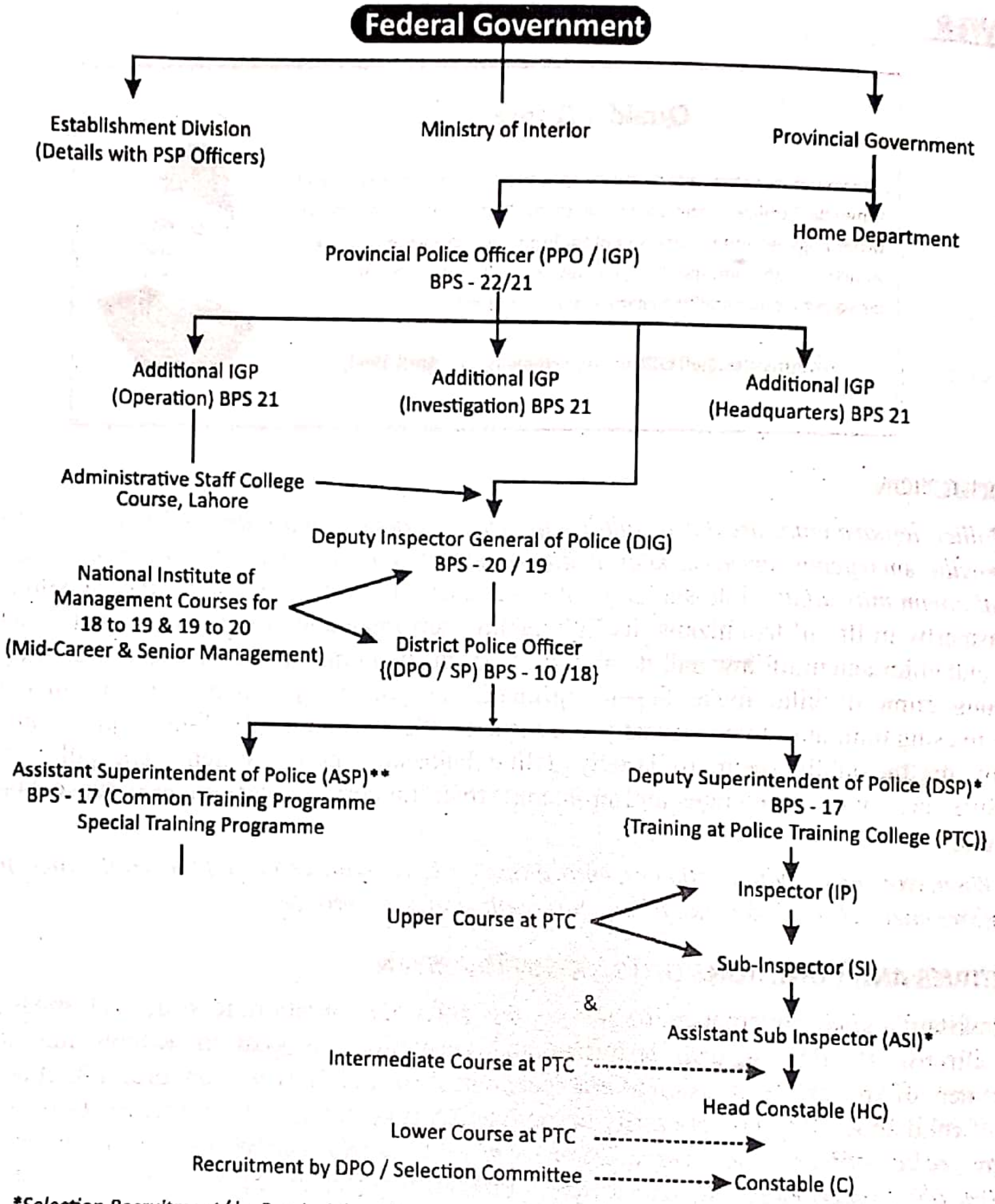
> *"When you have police officers who abuse citizens, you erode public confidence in law enforcement. That makes the job of good police officers unsafe".*

OBJECTIVES AND FUNCTIONS OF POLICE IN PAKISTAN

Pakistan's good governance; its justice, law and order situation; its peace and prosperity in life of its citizens; its fight against terrorism and corruption; its goal to achieve rule of law and enforcement of law; and its mission to eradicate numerous social evils, from drug addiction to heinous crime of child abuse, depends primarily on police department. Once Mary Frances Berry said, *"When you have police officers who abuse citizens, you erode public confidence in law enforcement. That makes the job of good police officers unsafe.*" Privately-run torture cells, extrajudicial killings, police brutality and a general lack of empathy for the public seem to largely define Pakistan's police force.

Functions of the Police include:

- Protect life, property and liberty of citizens.
- Preserve and promote public peace.
- Ensure that the rights and privileges, under the law, of a person taken in custody, are protected.
- Prevent the commission of offences and public nuisance.
- Collect and communicate intelligence affecting public peace and crime in general.


Federal Government
Establishment Division (Details with PSP Officers)
Ministry of Interior
Provincial Government
Home Department
Provincial Police Officer (PPO / IGP) BPS - 22/21
Additional IGP (Operation) BPS 21
Additional IGP (Investigation) BPS 21
Additional IGP (Headquarters) BPS 21
Administrative Staff College Course, Lahore
Deputy Inspector General of Police (DIG) BPS - 20 / 19
National Institute of Management Courses for 18 to 19 & 19 to 20 (Mid-Career & Senior Management)
District Police Officer {(DPO / SP) BPS - 10 /18}
Assistant Superintendent of Police (ASP)** BPS - 17 (Common Training Programme Special Training Programme
Deputy Superintendent of Police (DSP)* BPS - 17 {Training at Police Training College (PTC)}
Inspector (IP)
Upper Course at PTC
Sub-Inspector (SI)
&
Assistant Sub Inspector (ASI)*
Intermediate Course at PTC
Head Constable (HC)
Lower Course at PTC
Recruitment by DPO / Selection Committee
Constable (C)

**Selection Recruitment/ by Provincial Public Service Commission (PPSC)*

***Recruitment / Selection by Federal Public Service Commission (FPSC) & Police Training College*

- Keep order and prevent obstruction on public roads and in the public streets and thoroughfares at fairs and all other places of public resort and in the neighbourhood of and at the places of public worship.
- Regulate and control traffic on public roads and streets.
- Take charge of all unclaimed property and to prepare its inventory.
- Detect and bring offenders to justice.
- Apprehend all persons whom police are legally authorized to apprehend and for whose apprehension, sufficient grounds exist.

- Ensure that the information about the arrest of a person is promptly communicated to a person of his choice.
- Enter and inspect without a warrant on reliable information any public place, shop or gaming-house where alcoholic drinks or narcotics are sold or weapons are illegally stored and other public places of resort of loose and disorderly characters.
- Obey and promptly execute all lawful orders.
- Aid and cooperate with other agencies for the prevention of destruction of public property by violence, fire, or natural calamities.
- Assist in preventing members of public from exploitation by any person or organized groups.
- Take charge of lunatics at large to prevent them from causing harm to themselves or other members of the public and their property.
- Prevent harassment of women and children in public places.
- Affording relief to people in distress situations, particularly in respect of women and children.
- Providing assistance to victims of road accidents.
- Assisting accident victims or their heirs or their dependents, where applicable, with such information and documents as would facilitate their compensation claims.

LAWS FOR PROVINCIAL POLICE FORCES OF PAKISTAN

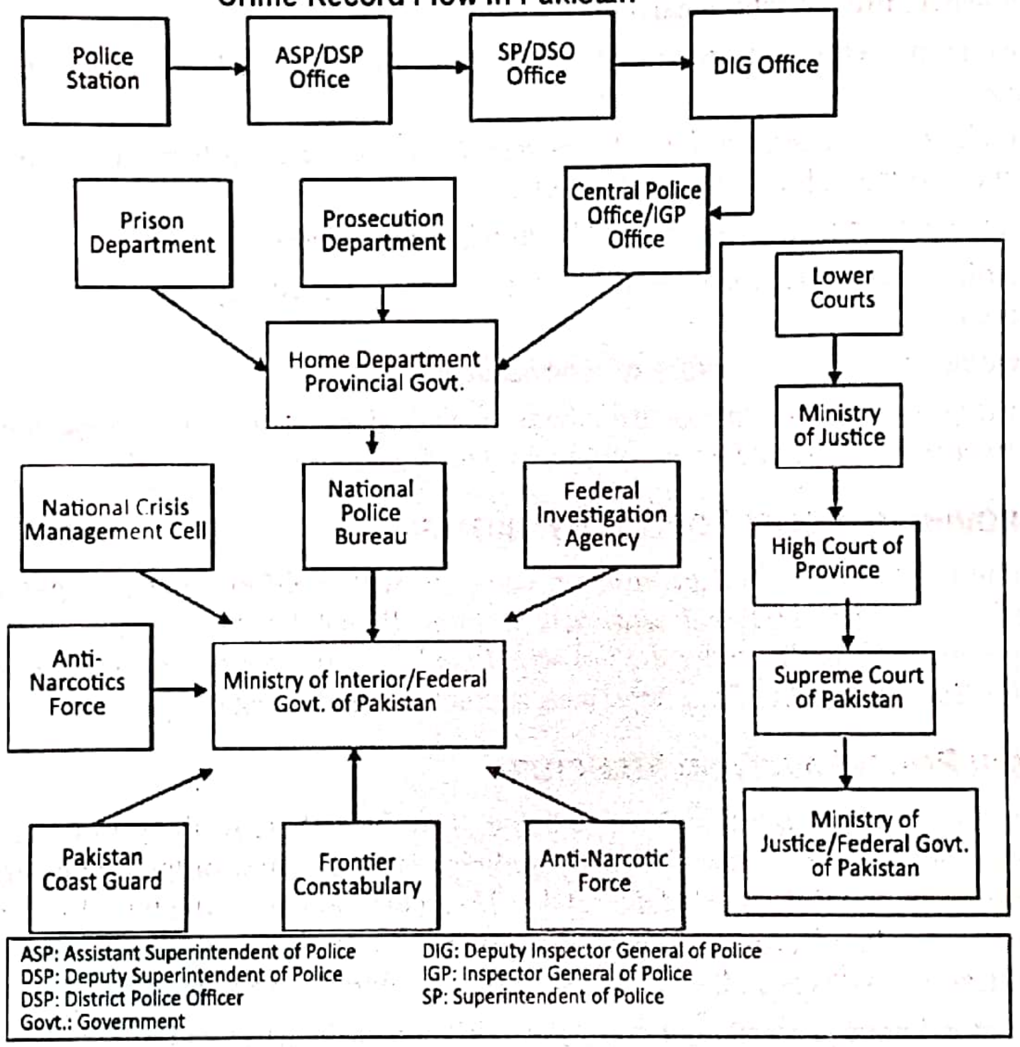
While running KPk, the PTI government came up with a reformed Police Act which was a mixture of the Police Order 2002, and some new features. Punjab has been running a diluted version of 2002. The province of Sindh, under the Pakistan People's Party, jumped back to the Police Act of 1861. And as for Balochistan, that is another incompetent and inefficient story.

BASIC ISSUES IN POLICE LAWS AND STRUCTURE

- First, there are several models of policing. The first, obvious, thing to do is to decide on what model we want to use. Currently, policing is the purview of the provinces. But the top, officer cadre, the PSP, is a federal intake. The actual policing, which is also the real bayonet strength of police forces, is done by the provincial cadres. There is much mismatch in terms of education, skillsets and, in most cases, socio-economic backgrounds.
- The second issue is about appreciating the differences in urban and rural policing.
- The third issue is accountability, a process much talked about. Bureaucrats try to make it more and more complicated by suggesting the creation of committees. This is of course a very important issue and would require a much lengthier discussion. But even that complex issue can be resolved without getting lost in intricacies.
- Fourth, the reforms process is not just about changing organograms. It is about creating the proper policing skillsets. Take, for instance, the issue of police excesses and accountability. Reforming the police is certainly a time-taking process. But the country can certainly take some measures in the short-term to improve efficiency of the force.
- Fifth is failure to register and investigate crimes.
- Sixth basic issue is registering false cases, making arbitrary arrests.
- Seventh, torture and inhumane treatment of accused in custody.

- Eighth, faked “encounter killings”.
- Ninth, women make up less than 2% of country’s police force. It gives birth to inefficiency and harassment in gender-based crimes.
- Finally, Pakistan has developed a culture of impunity. Pakistan’s police are widely regarded as among the most abusive, corrupt, and unaccountable institutions of the state. Police implicated in serious abuses are almost never brought to justice.

Crime Record Flow in Pakistan


Police Station
ASP/DSP Office
SP/DSO Office
DIG Office
Prison Department
Prosecution Department
Central Police Office/IGP Office
Home Department Provincial Govt.
Lower Courts
Ministry of Justice
High Court of Province
Supreme Court of Pakistan
Ministry of Justice/Federal Govt. of Pakistan
National Crisis Management Cell
National Police Bureau
Federal Investigation Agency
Anti-Narcotics Force
Ministry of Interior/Federal Govt. of Pakistan
Pakistan Coast Guard
Frontier Constabulary
Anti-Narcotic Force
ASP: Assistant Superintendent of Police
DSP: Deputy Superintendent of Police
DSP: District Police Officer
Govt.: Government
DIG: Deputy Inspector General of Police
IGP: Inspector General of Police
SP: Superintendent of Police

STRUCTURAL ISSUES AND PROBLEMS IN POLICE SYSTEM

1. Lack of Supervision of Junior Ranks Police Officers

When investigated, most cases of police high-handedness point to the junior ranks acting on their own, without the consent or approval of their commanding officers. This happens when they feel the officer can be easily manipulated with a concocted story — which is partly true, because the criterion for recruitment of police officers via the CSS exam often ends up with the selection of square pegs for round holes.

2. Current Recruitment Process for Executive

Currently, the majority of police officers are recruited through the CSS exam, which means that individuals in their 20s join the force. This system is ill-suited to officer recruitment given the fact that policing is a job that requires a certain aptitude and specific training. A career in the police, just like a career in the military, is a lifestyle that must be inculcated from a young age. Do all those CSS qualifiers who join the police service aspire to join it out of a passion for the job?

A small percentage might have such ideals in mind, but the majority joins it for social prestige, security, safety and impunity — yes, the impunity to do whatever they feel like. A confession of sorts in this regard was recently made by IG Punjab in a meeting with RPOs when, expressing his dismay over the insensitive attitudes of the field command, he said, "District police officers have to come out of their luxury offices and look at what is happening in the police stations."

3. Misplaced Training Criteria for Police Officers

The recruitment Criteria of (PSP) police officers is misplaced since no expertise in the field of Criminology or Criminal Justice is required from candidates. Training at the Civil Services Academy is also not as required for the police service; it has nothing to do with their field. The specialised trainings do not help much either, because these are treated as a mere formality and are thus inadequate. The very fact that there is not even a single dropout in the training phase betrays any claims of training being competitive. Those who are allocated to the police service complete their training without fail and go on to serve till the age of superannuation.

These insufficiently trained officers are, in fact, handicapped; they are mere tools in the hands of the junior ranks. Their authority has not been internalized by the department and those among the junior ranks can easily manipulate them given their knowledge of the internal mechanisms of the department. They are no match for 'hardened' subordinates who have been serving in the system for years before them; they are too smart for the educated, sophisticated, studious officer who has landed the position due to academic prowess, which 95% of the time is not even remotely relevant to their job.

4. Impact of Flawed Investigations

The flawed investigations create lacunae that could be exploited by the defence team during the trial process and were a decisive factor in the high rate of acquittal of offenders. In turn, these acquittals lay open the judiciary and for that matter the entire criminal justice system to strong criticism.

5. Wide-ranging Problems

It has often been observed that police officials ask for money for their vehicle's petrol from a complainant in case they need to travel far for an investigation. They simply do not have the budget to make such trips on official funds alone. But budget or the lack thereof is not the only problem plaguing the police — ***from recruitment to training of officers, everything is obsolete***. It is the officers who make or break a police force; they motivate the sepoys and subordinates to give their best, to be on their best behaviour and, if officers are found lacking, there is not much of a disciplined force left — which is exactly what has happened with the police in Pakistan in general and Punjab police in particular.

CRITICAL ANALYSIS OF THE POLICE SYSTEM OF PAKISTAN

Among the serious constraints undermining the police system of Pakistan are:

(a) an outdated legal and institutional framework (devised for 19th century India consisting of near static villages with hardly any urbanisation or industrialization, and meant principally for a colonial rule),

- **(b)** arbitrary and whimsical (mis)management of police by the executive authority of the state at every level (policemen were increasingly recruited, trained, promoted and posted without regard to merit and mainly for their subservience to people with influence and power),
- **(c)** inadequate accountability mechanism,
- **(d)** poor incentive systems,
- **(e)** widespread corruption, and
- **(f)** severe under-resourcing of law and order. Funds are not enough
- **(g)** **An Instrument of Last Resort:** For decades the police in this country have been castigated for being one of the most ineffective state institutions in the criminal justice system. Crime prevention and investigation are the main duties of the police and hence their performance in this respect can provide a good measure of their effectiveness and efficiency. The police seem to be failing on both counts. Additionally, the police also lack the trust of the public. Instead of being the first port of call in an emergency they have become an instrument of the last resort.
- **(h)** **Low Conviction Rate:** The ineffectiveness of the police is illustrated by the low conviction rate in the country as well as the rising trend in crime and lawlessness in general. It is now widely acknowledged that the conviction rate is no more than 10% and the main reason for this is poor investigations by the police.
- **(i)** **Criminal Justice System vs. Mob Justice:** Incidents of mob justice have also risen in recent years indicating, among other things, that a growing number of citizens no longer rely on the police or for that matter the criminal justice system as a whole. A number of incidents in recent past are a stark reminder of how a law enforcement agency can degenerate itself into a helpless bystander before the growing tendency of mob justice and power of the vigilantes.

POLICE REFORMS

There have been number of reports on police reforms since 1947. They are all gathering dust somewhere. A number of proposals have been made and practitioners know what the problems are. They are also, by and large, aware of the best practices to tackle those problems. The problem therefore is not a lack of knowledge or insight or suggestions. The reason we reinvent the wheel every few years is because organisational and other interests trump any serious implementation of reforms.

Former president, Gen. Pervez Musharraf, embarked on a somewhat ambitious police reforms programme. He got three top police officers – former IGs Zulfiqar Qureshi, Afzal Shigri and Shoaib Suddle – to give him something new in the shape of the Police Order, 2002. However, that reforms programme was necessarily linked with the overall Devolution Plan.

Both the devolution plan as well as the Police Order 2002, began to be diluted while Musharraf was still in power. Reason: the politicos who came to power in the 2002 elections did not want to deal with independent police officers any more than they wanted strong, autonomous, fiscally- and administratively-independent local governments. With Musharraf gone, the devolution plan, or whatever was left of it, was chucked out along with the police reforms.

ILL-FOUNDED CURRENT REFORMS DEBATE

The most recent suggestion for reforming the police is another such attempt to reinvent the wheel by making the police subservient to district administration. Again, such an arrangement, instead of addressing the root cause of the problem, would only be adding another layer of decision-making in matters calling for police action. Also, there is nothing new about this latest suggestion, as this was the case in the Police Act, 1861 until it was replaced by the Police Order, 2002. Sadly, suggestions for reforming the police are always focused on assuming the power that the police force entails rather than truly reforming it.

The police need to recruit officers at the young age of 18-22 and have them undergo relevant education and rigorous training. In a nutshell: our police will continue beating suspects to death if we keep beating about the bush by delaying genuine police reforms.

While it is crucial to reform the police, it is equally imperative to train the personnel as field-expert police officers, and not just treat them as clerks in uniform.

SUGGESTED MECHANISM FOR REFORMING THE POLICE FORCE

1. Police force at all levels must be de-politicised. The postings and transfers must not be based on personal motives or relations.
2. Its abuse and misuse of powers must be checked regularly and stringent legislative reforms are introduced in prevalent legislation. An independent accountability forum or authority must be formulated for keeping a strict check and balance on policing.
3. The tenure of the Station House Officer and high-ups must be reduced but ensured with a parallel transfer system.
4. The federal and provincial governments must legislate, with an iron will, a coherent and unified policy for the whole country.
5. The complaints against the police partisan behaviour or fabrication of evidence must be heard by the judiciary and severe punishments, as a deterrent, should be legislated.
6. Deaths under police custody must be called terrorism of police and should be dealt with following anti-terrorism laws.
7. Further, the burden of the backlog of cases on one police officer must be reduced while their pays and annuities should be increased.
8. The investigators must be given specialized training for different types of crimes.
9. A special training programme for proper investigation and how to deal with forensic technology should be started.
10. Most importantly, CCTV cameras should be installed in all police stations.
11. As in foreign countries, all police officers who are deputed for investigation must wear pocket cameras when they are on patrol.
12. More female police officers, senior and junior, must be recruited in police forces across the country. It will create gender balance which will aid in efficient investigation of gender-based crimes like honour killing, acid throwing, rape, domestic violence and sexual harassment.
13. Lastly, judicial magistrates must be obliged to maintain a weekly check on the arrests and pending investigation cases.

COMPREHENSIVE SUGGESTIONS/RECOMMENDATIONS/REMEDIES FOR REFORMING POLICE SYSTEM

I. Police Accountability

The Internal Accountability Branches be established at CPO level, headed by Additional IGP in the Provinces and DIG in Islamabad Capital Territory.

(a) Head of Internal Accountability Branches may act as Police Ombudsmen in the concerned Central Police Offices.

(b) After Internal Accountability Branches at CPO and Regional levels are established all over the Provinces and ICT, they should be extended to all the districts subject to availability of financial and administrative resources.

(c) The Provincial Complaint Authorities (PCAs) to be notified by the Federal and concerned provincial government, at the earliest.

(d) The Provincial Justice Committees (PJCs) to be made functional with clear composition and mandate to act as potent external accountability mechanism.

II. Improving Quality of Investigations

(a) Investigation side needs major up-gradation to win public confidence. In this regard there should be organizational revamping and giving investigation its due place within the Police working.

(b) There should be functional specialization with an operationally distinct cadre. It also recommends introduction of the concept of investigation teams, appointment of best Police officers as investigators and establishment of state of the art training institutes with international certification and accreditation. The investigators will lose their individual certification for persistent poor performance and their failure to undergo at least 25-30 hours of continuous professional development courses/ trainings on yearly basis.

(c) It is recommended that adequate resources be allocated to meet the cost of investigation.

(d) Investigation shall be carried out by specific teams.

(e) Forensic teams shall assist investigation teams.

(f) Officers dealing with investigation shall require training for skill enhancement and certification.

(g) To safeguard against abuse of powers a due diligence process would be compulsory in accordance with PR26-1 and 26-2 before making arrest.

III. Revamping Urban Policing

(a) There is a need of revisiting the fundaments of policing model in the light of Police Order, 2002 as well as international best practices in urban policing to address the challenges in an urban setting. One million is an optimal population size for a city to benefit from an urban policing design. Ten cities in Pakistan, viz. Karachi, Lahore, Faisalabad, Rawalpindi, Gujranwala, Peshawar, Multan, Hyderabad, Islamabad and Quetta qualify under this criterion.

(b) In order to restructure policing on functional basis, Police command in the urban districts is recommended to be organized in eight wings each headed by a DIG:

1. Administration
2. Traffic
3. Operations
4. Law & Order
5. Investigation
6. Security
7. Community Relations
8. Communications and Technology

IV. Enhancing Effectiveness of the CJS in Dealing with Terrorism Cases

(a) The capacity of CJS needs to be substantially enhanced to improve its potential to adequately counter the challenge of terrorism;

(b) The is need to address the issue of multiple laws as the anti-terrorism laws effectiveness.

(c) The National Counter Terrorism Authority Act, 2014, be implemented in letter and spirit.

V. Legislative Reforms

(a) The rule of law can best be protected through constitutionalism, which confers legislative role of the federation in Police and policing laws. Hence, there should be a uniform federal Police law.

(b) Legislative architecture is captured by non-specialists who use superintendence clauses in laws and by doing so the authority is enjoyed by the non-specialists and the responsibility is borne by specialists.

(c) There has been legislation on women, juveniles and witness protection. However, the constitutional relationship between the law making and budget making is missing. Excessive legislation was introduced without allocating resources for implementation. Resultantly, there are more new laws with no resources, hence eroding the trust of citizens on the fundamental rights and the constitutional dispensation. There must be linking of law making and budget making especially in the domain of criminal justice.

(d) The efforts at updating the Punjab Police Rules, 1934 (that have been adopted by all the Police organizations and that deal with many supplementary and allied issues like custody of evidence, arrest, file making etc.) have not been accorded approval by the relevant authorities. The updating exercise is exhaustive and needs statutory platform for its timely approval. The updated Police rules will provide legal basis for departmental/internal accountability;

(e) With the provincial Police legislations, the law of change of investigations as regulated by the Police Order, 2002 was not preserved. The unregulated change of investigation powers in criminal cases are discretionary and often used in arbitrary manner. The law should be provided to check the discretion.

(f) The Article 70 of the Qanoon-e-Shahadat Order, 1984 that provides the legal basis of the testimonial evidence in trials must be amended to upgrade the weightage of scientific evidence.

(g) With respect to report under Section 173 CrPC, 1898, there is need of:

- streamlining types of final report under Section 173 of the Cr PC, 1898;
- review of timelines for submission of final report, which are same for petty and heinous offences;
- timelines for forensic reports must be statutorily provided to ensure timely completion of trials;
- the relationship between Police and prosecution be statutorily determined in so far as timelines are concerned to ensure timely submission of challans/final reports and to ensure that the responsibility of submission of challan is shared between the Police and the prosecution;
- the procedure for submission of JIT (constituted under Section 19 of the Anti-Terrorism Act, 1997) report under Section 173 should be statutorily provided;
- the officer in charge of an investigation, instead of in charge of a Police station, should be statutorily covered for submission of report to expedite and regularize the process.

QUESTION 11

COURTS

Q. What is the role of courts in the criminal justice system? Explain in detail the constraints and issues in the criminal court system of Pakistan.

Q. Backlog of cases has been a major issue in Pakistan's judiciary. Critically analyse the role of Model Courts in reforming this issue.

ANSWER

INTRODUCTION

Courts are very important part of the criminal justice system of any country. The criminal courthouse is the scene of the trial process. Here the criminal responsibility of defendants accused of violating the law is determined. Ideally, the court is expected to convict and sentence those found guilty of crimes while ensuring that the innocent are freed without any consequence or burden. The court system is formally required to seek the truth, to obtain justice for the individual brought before its tribunals, and to maintain the integrity of the government's rule of law. The main actors in the court process are the:

- judge, whose responsibilities include overseeing the legality of the trial process,
- the prosecutor and the defence attorney, who are the opponents in what is known as the adversary system. These two parties oppose each other in a hotly disputed contest – the criminal trial – in accordance with rules of law and procedure.

IMPORTANCE OF JUSTICE IN SOCIETY

From early philosophers to modern day jurists, every scholar demands and craves justice. It is the bedrock of a prosperous society. Without the provision of justice society cannot function smoothly. All major religions enshrine the importance of a just system in their respective religious codes. Islam stresses upon justice and greatly prioritises it. A qazi will be the first one to answer for his decisions. After all, in this world, he was the one dispensing justice to the common man. A single individual kept incarcerated wrongfully would be an intolerable burden in the afterlife. Even a delay in the release of an innocent individual would be held accountable.

HISTORY AND EVOLUTION

The judicial system of Pakistan has evolved over a long period of time, spanning roughly over a whole millennium. The system passed through three distinct stages of historical development, namely, Hindu Kingdom, Muslim Rule and British Colonial Administration. The fourth and current era, commenced with the partition of India and the establishment of Pakistan, as a sovereign and independent State. The system, thus, has evolved through a process of reform and development. This conclusion enjoys near unanimity among historians and commentators of Indian legal history. During this process of evolution and growth, the judicial system did receive influences and inspirations from foreign doctrines/notions and indigenous norms/practices, both in terms of organizing courts structure, hierarchy, jurisdiction and adopting trial procedures/practices. Therefore, the present judicial system is not an entirely foreign transplant, as is commonly alleged, but has acquired an indigenous flavour and national colour. And whereas the system may not fully suit the genius of our people or meet the local conditions, its continued application and practice has made it intelligible to the common man. The very fact that increasing number of people are resorting to the courts for the resolution of their conflicts/disputes, indicates that the system enjoys a degree of legitimacy and acceptance.

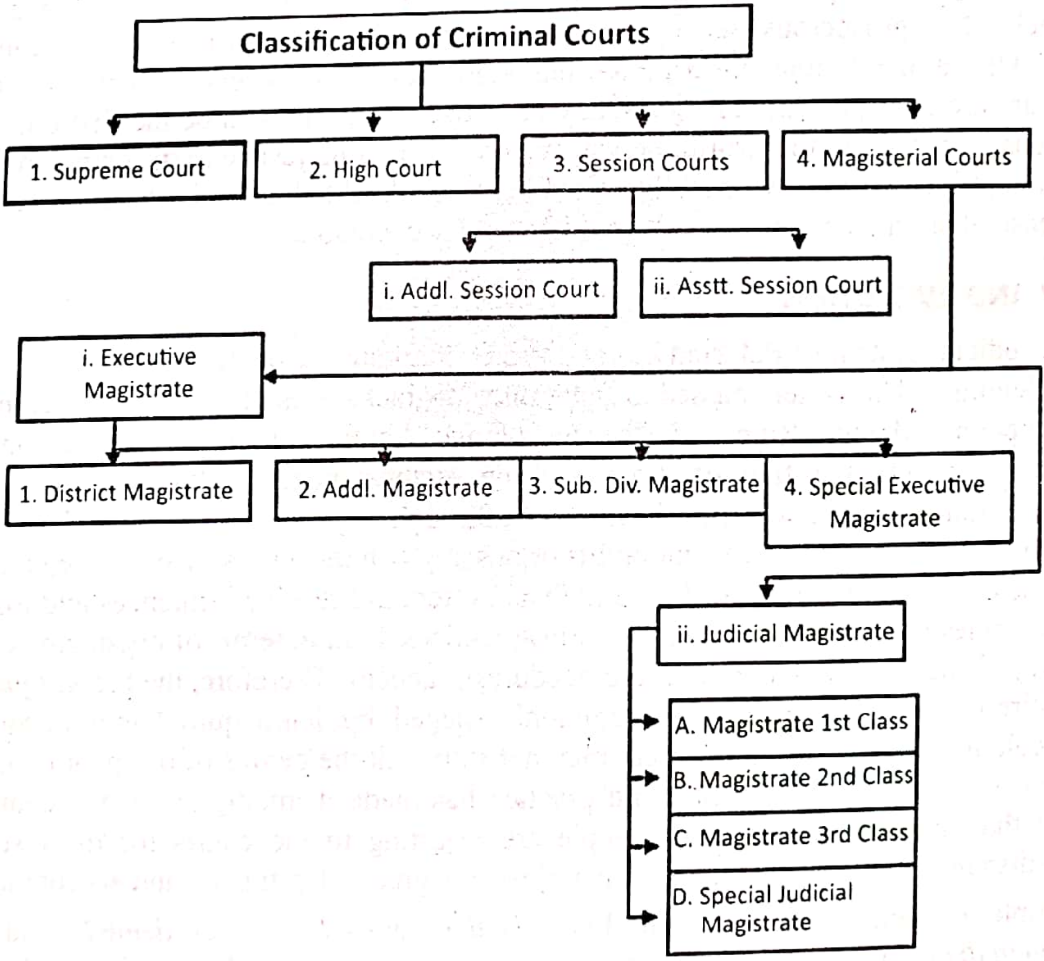
People are familiar with maxims like *"Justice delayed is justice denied"* and *"Let justice be done though the heavens may fall."* Justice keeps balance and order in a society and gears it towards prosperity and progress. While an unjust society cannot even imagine to prosper and progress because it collapses sooner or later due primarily to its unjust order and practices.

ISLAM AND PAKISTAN'S LEGAL SYSTEM

The legal system of Pakistan is based on English common law and Islamic law. Between 1947 and 1978, Islamic law was largely restricted to the sphere of personal status issues, such as marriage, inheritance and divorce. The Islamisation of the legal system began in earnest under Gen. Zia-ul-Haq. Through a series of presidential decrees, Zia introduced far reaching changes in Pakistan's criminal justice system, regulated by the Pakistan Penal Code of 1860 and the Code, Criminal Procedure, 1898. He also created a parallel court system, consisting of Shariat courts, and amended the country's anti-blasphemy laws. While most of the "Islamic" laws he instituted are still on the statute, and some were reinforced by conservative governments.

THE JUDICIARY OF PAKISTAN

The Judiciary of Pakistan is a hierarchical system with two classes of courts: the superior judiciary and the subordinate judiciary. The superior judiciary is composed of the Supreme Court of Pakistan, the Federal Shariat Court and five High Courts, with the Supreme Court at the apex. There is a High Court for each of the four provinces as well as a High Court for the Islamabad Capital Territory. The Constitution of Pakistan delegate the superior judiciary with the obligation to preserve, protect and defend the constitution.


Classification of Criminal Courts
1. Supreme Court
2. High Court
3. Session Courts
4. Magisterial Courts
i. Addl. Session Court
ii. Asstt. Session Court
i. Executive Magistrate
1. District Magistrate
2. Addl. Magistrate
3. Sub. Div. Magistrate
4. Special Executive Magistrate
ii. Judicial Magistrate
A. Magistrate 1st Class
B. Magistrate 2nd Class
C. Magistrate 3rd Class
D. Special Judicial Magistrate

THREE MAIN TIERS OF COURTS

- District courts are trial courts
- High courts as appeal court and for other constitutional and provincial matters

- Supreme Court is the appeal court and the court for fundamental rights, along with constitutional and governmental cases

Strength and Number of Judges

The sanctioned strength of judges in Pakistan's judiciary is as under:

Superior Courts

Courts	Supreme Court of Pakistan	Federal Shariat Courts	Lahore High Court	High Court of Sindh	High Court of Balochistan	Peshawar High Court	Islamabad High Court
Strength	CJ+16	CJ+7 (3 to be Ulema)	CJ+59	CJ+39	CJ+10	CJ+19	CJ+6

Subordinate Courts

Court	Punjab	Sindh	Balochistan	KPk	ICT
District & Sessions Judge	37 (+84 ex-cader)	27	30	25	2
Addl. District & Sessions Judge	607	115	32	103	30
Senior Civil Judge & Civil Judges-cum-Judicial Magistrates	1722	362	204 (Member Majlis-e-Shura) 16 (Qazi) 30	322	56
Total	**2450**	**504**	**312**	**450**	**88**

Administrative Staff of Superior Courts

Court	Supreme Court of Pakistan	Federal Shariat Court	Lahore High Court	High Court of Sindh	Peshawar High Court	High Court of Balochistan	Islamabad High Court
Staff	746	250	2070	1307	637	498	387

SPECIAL TRIBUNALS AND BOARDS

There are numerous special tribunals such as

- Banking Courts
- Custom Courts
- Drug Courts
- Federal Services Tribunal
- Provincial Services Tribunals (one for each province)
- Income Tax Tribunals
- Anti-Corruption Courts
- Anti-Terrorism Courts
- Labour Courts
- Labour Appellate Tribunal
- Environmental Courts
- Board of Revenue
- Special Magistrate Courts
- Control of Narcotic Substances (Special Courts)

- Consumer Courts
- Family Courts
- Juvenile Courts

BACKLOG OF CASES IN PAKISTAN'S JUDICIARY

There is a huge backlog of cases or in other words, there are huge number of under-trial or pending cases in Pakistan's judiciary.

Consolidate statement showing pendency, institution and disposal of cases during the period 31st August, 2019 in the Supreme Court of Pakistan, Federal Shariat Court, High Courts and District Judiciary

Superior Courts	Pendency	Institution during the period	Disposal during the period	Balance
Supreme Court of Pakistan	41,239	1,318	1,043	41,545
Federal Shariat Court	191	5	4	192

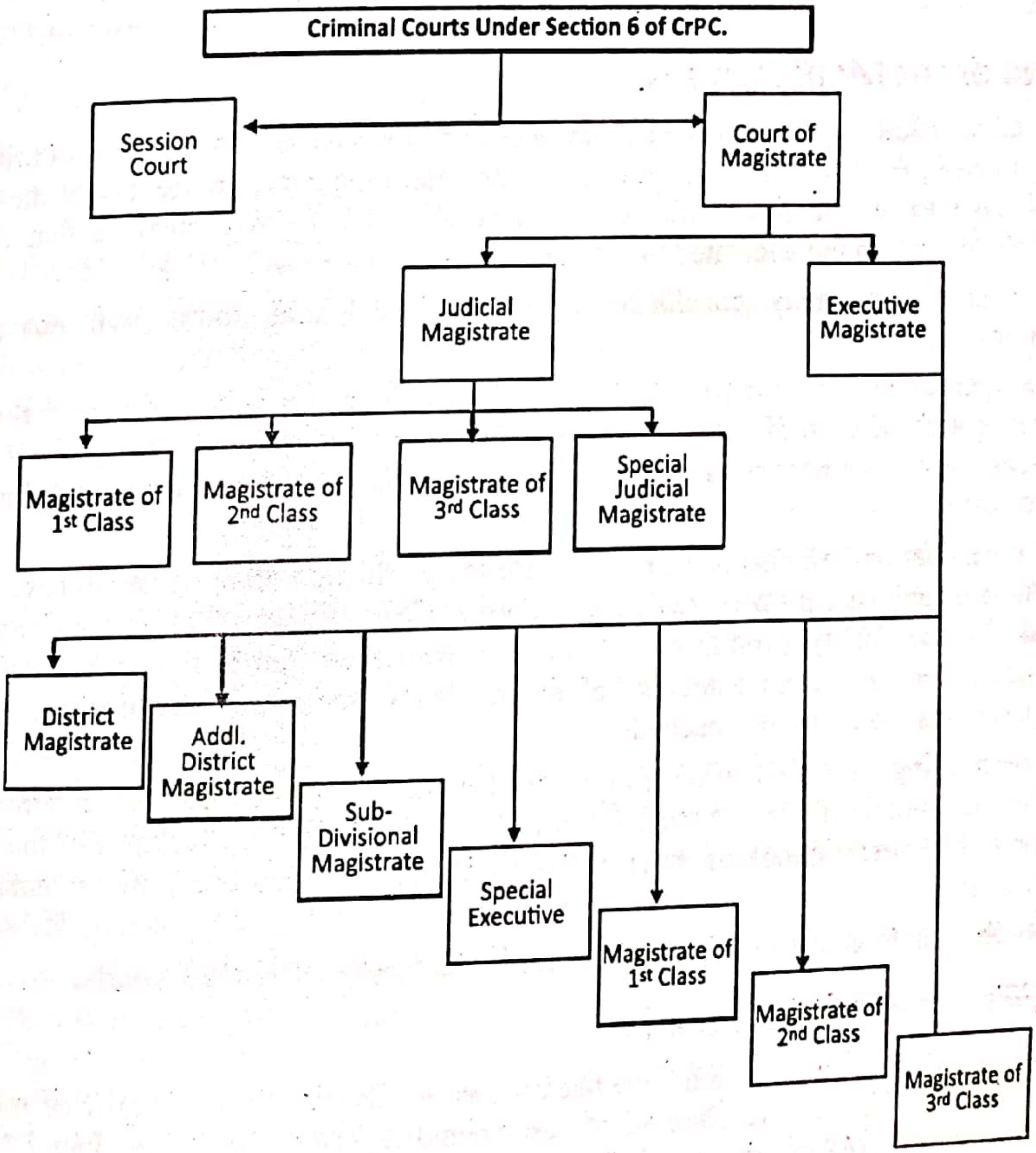
Name of Courts	Old Cases Filed up to 31-12-2011			New Cases Filed from 1-1-2012					Old + New (Grand Total)		
High Courts	**Pend**	**Disp**	**Bal**	**Pend**	**Inst**	**Disp**	**Bal**	**Pend**	**Inst**	**Disp**	**Bal**
Lahore High Court	9,121	0	9,121	160,766	5,764	4,353	162,177	169,887	5,764	4,353	171,298
High Court of Sindh	15,217	139	15,079	72,075	2,570	2,238	72,401	87,292	2,570	2,377	87,480
Peshawar High Court	2,875	5	2,870	29,185	1,512	628	30,082	32,060	1,512	633	32,952
High Court of Balochistan	140	2	138	5,737	147	123	5,761	5,877	147	125	5,899
Islamabad High Court	950	0	950	15,125	360	160	15,320	16,075	360	160	16,270
Total (High Courts)	**28,303**	**146**	**28,158**	**282,888**	**10,353**	**7,502**	**285,741**	**311,191**	**10,353**	**7,648**	**313,899**

District Judiciary	Pend	Disp	Bal	Pend	Inst	Disp	Bal	Pend	Inst	Disp	Bal
District Judiciary, Punjab	9,527	2	9,531	1,068,661	71,982	64,367	1,075,613	1,078,188	71,982	64,369	1,085,144
District Judiciary, Sindh	783	152	713	104,775	23,787	26,447	102,110	105,558	23,787	26,599	102,823
District Judiciary, KPk	334	4	332	200,840	13,712	13,438	200,678	201,174	13,712	13,442	201,010
District Judiciary, Balochistan	53	0	55	13,342	4,214	4,219	13,337	13,395	4,214	4,219	13,392
District Judiciary, Islamabad	811	0	811	37,454	745	317	37,882	38,265	745	317	38,693
Total (District Judiciary)	**11,508**	**158**	**11,442**	**1,425,072**	**114,440**	**108,788**	**1,429,620**	**1,436,580**	**114,440**	**108,946**	**1,441,062**
Grand Total (Supreme Court, Federal Shariat Court, High Courts and District Judiciary)								1,789,201	126,116	117,641	1,796,698

DISTRICT AND SUBORDINATE COURTS

The Subordinate Judiciary may be broadly divided into two classes: one, civil courts, established under the Civil Courts Ordinance, 1962, and two, criminal courts, created under the Code of Criminal Procedure, 1898. In addition, there also exist other courts and tribunals of civil and criminal nature, created under special laws. Their jurisdiction, powers and functions are specified in the statutes, creating them. The decisions and judgments of such special courts are assailable before the superior judiciary (High Court and/or Supreme Court) through revision or appeal.

The provincial governments fund the justice sector. The civil courts and criminal courts judges and their terms and conditions are regulated under the provincial rules. The High Court, however, exercises administrative control over such courts. The civil courts consist of District Judge, Additional District Judge, Senior Civil Judge and Civil Judge Class I, II & III. Similarly, the criminal courts comprise of Sessions Judge, Additional Sessions Judge and Judicial Magistrate Class I, II & III. Law fixes their pecuniary and territorial jurisdictions. Appeal against the decision of civil courts lies to the District Judge and to the High Court, if the value of the suit exceeds specified amount. Similarly, in keeping with the quantum of penalty, appeals against criminal courts lie to Sessions Judge or High Court.


Criminal Courts Under Section 6 of CrPC.
Session Court
Court of Magistrate
Judicial Magistrate
Executive Magistrate
Magistrate of 1st Class
Magistrate of 2nd Class
Magistrate of 3rd Class
Special Judicial Magistrate
District Magistrate
Addl. District Magistrate
Sub-Divisional Magistrate
Special Executive
Magistrate of 1st Class
Magistrate of 2nd Class
Magistrate of 3rd Class

The Code of Criminal Procedure, 1898 prescribes the criminal procedure. The Qanun-e-Shahadat Order, 1984 prescribes the competency of witnesses, the examination of witnesses, form of evidence and the procedure for presenting the same. The procedure prescribed in the law applies to judicial proceedings and investigations by a court of law in civil or criminal cases. The special courts follow the procedure prescribed in the abovementioned codes, whereas some such courts follow special procedure, laid down in the respective statute.

> *"People are losing confidence in the judicial system because the legal fraternity is not observing ethical values in legal practice. A newcomer used to join some chamber not only to learn how to practise law but also to learn mannerism, the way he should be dealing with the court and clients. This is not in practice anymore as the system is eroding."*
>
> *Justice Aamer Farooq,*
>
> *Senior Judge of the Islamabad High Court (IHC)*

MODEL COURTS

Article 37 (d) of the Constitution requires the State to provide expeditious and inexpensive justice thus under the light of this principle model trial courts have been established in the country to carry out trials daily. Model courts are special courts within the existing judicial infrastructure.

THE WORKING OF THE MODEL COURTS

- A trial schedule will be provided to lawyers and prosecutors so that they can follow it to a tee. In case, the lawyers are unable to appear before the court on the day of the case, they will have to let the model trial court know who will replace them so that the trial is concluded within the stipulated time-frame.
- To ensure the timely conclusion of cases, model trial courts will not grant any adjournments.
- The attendance of witnesses would be ensured through process servers for which SP-Investigation of each district will act as a focal person liaising with the process servers. A process server is a person who serves legal documents (summons) to someone involved in a court case.
- SP-Investigation will also be responsible for the production of all witnesses (except medical witnesses) and case property (evidence). Former Chief Justice of Pakistan Asif Saeed Khosa said for the timely production of medical witnesses (those who have serious health complications and cannot appear before the courts), the secretaries of the relevant health departments would be approached.
- A monitoring and evaluation cell under the supervision of CJP or chairman NJPMC (National Judicial Policy Making Committee) will oversee the workings of the model trial courts. The performance of these courts would be reviewed every two months, the chief justice said.
- Initially, pending murder and narcotics cases were assigned to these courts.

PERFORMANCE OF THE MODEL COURTS

- The 465 Model Courts which have been set up across the country to provide speedy justice and to clear the massive backlog of cases decided 50,743 cases including 7,356 cases of murder and 12,168 of narcotics during April to October 2019.
- Witnesses of 124,669 were recorded during hearing of various cases while 182 model criminal courts also disposed of 13,571 criminal cases along with murder and narcotics cases.

The statistics show that the model courts in all the four provinces and the Islamabad Capital Territory have given good results by deciding cases in a few months which might otherwise have dragged on for years.

The former Chief Justice of Pakistan, Asif Saeed Khosa said that indeed Model Courts materialized the vision of expeditious and inexpensive justice as envisaged in Article 37(d) of the Constitution of 1973 of Islamic Republic of Pakistan, which otherwise was just a dream before establishment of Model Criminal Trial Courts in the country. Efforts, devotion and commitment on the part of model court judges turned the dream of speedy and inexpensive justice into reality and litigants are getting prompt relief. The credit goes to the Model Court judges who rejuvenated the ailing judicial system under existing and available resources and without any amendments in the given law. It has instilled a new sprit into masses to repose confidence in the institution of judiciary, which otherwise had always been blamed of undue delays.

In most developing countries, court cases linger on for years and decades. There are several causes of this. Law courts have to be fully satisfied before they deliver their judgments. The basic principle on which law functions is, let 99 murderers go scot free, but no innocent should be punished. Law courts are not supposed to rush through while deciding cases. However, sometimes circumstances arise when speedy trial courts are set up to clear logjam of cases. Adjournments sought by lawyers also delay cases. In recent years in Pakistan, lawyers often go on strike to protest issues confronting society as a whole and sometimes only themselves. Unnecessary delays in dispensation of justice should be discouraged. This is what the model courts are doing.

CRITICAL ANALYSIS OF THE COURT SYSTEM

The prevailing criminal justice system in Pakistan undeniably is both exploitative and oppressive. It is exploitative because it unduly rewards the elite with excessive economic benefits at the expense of the poor in stark contrast with the injunctions of Islam and the principles of welfare state, which call for the redistribution of wealth from the rich to the poor. It is oppressive because it denies justice to the weak against the criminal excesses of the powerful in the society who can virtually get away with murder. All kinds of elite of the society is collectively responsible for this unhappy state of affairs. The need of the hour is for urgent policy measures to rectify the situation and ensure that Pakistan turns into an Islamic welfare state in its true sense where economic exploitation and social oppression of the poor and the weak come to an end, enabling them to lead their lives with dignity, develop their God-given talents, and realize their potential.

ISSUES AND PROBLEMS IN COURT SYSTEM

- Backlog of cases, around 1.8 million cases pending.
- Lack of Judges. Around 4000 judges for a population of 220 million people.
- Political pressure
- Lack of expertise. Many judgments by the District Judiciary are struck down by High courts due to not following the principles of law. Once a journey for justice begins, the children of the person starting the journey would finally reach a conclusion. Only to be disappointed once the appellate court declares that the lower court had erred in law and passed the judgment on a misreading of the applicable principles of law.
- The judges themselves lack training and expertise to deal with complex cases. Quite a few judges who actually have the capacity to dispense justice, have to face the wrath of the

elected members of the bar. Naked threats are given to the judges eventually resulting in the case of the judge being transferred.

- Security of judges and their families is another main issue.
- Inordinate delays, lawyer strikes, incompetent trial judges coupled with no sense of responsibility are one of the major factors that contribute to the constant decay of our legal system. The ironic part is that the superior judiciary gets better each passing day and is busy re-writing the legal jurisprudence of our country. Yet, the trial courts, where the actual ball rolls, are on a constant descent. Most of the judges present in the lower judiciary lack the intellectual capacity to comprehend various principles of law and dispense justice accordingly. Simultaneously, the assistance rendered to them by most of the members of the legal fraternity is comical and conveniently placed. Principles and rules which may hinder a lawyer in getting the relief he seeks, will be down played and manipulated. Despite being officers of the court, they mostly do not fulfil their duty diligently and manoeuvre the proceedings in a way which suits them.
- Inadequate judicial infrastructure is also leading to the inability of the courts to keep up with the growing population and litigation demands. Crime ratio is increasing day by day due to weak law and order. The number of judges in district courts is also a problem.
- Another problem is in the police department. After lodging an FIR, the police are the first executive agency, especially in criminal cases, which reach the crime scene for investigation. The investigation is the first step in a criminal case which is the primary administrative duty of the police. In fact, the investigation is an evidence which leads the court to a just and fair conclusion about the guilt or innocence of an accused person. The investigation consists of proceeding to the spot, ascertainment of the facts, collection of evidence and detainment of the suspect, if required.

SUGGESTIONS/RECOMMENDATIONS FOR REFORMING THE COURT SYSTEM

1. The court system needs judicial reforms. Cases should be heard on merit and there should be a specific time frame for the settlement of cases. Cases should not linger on for generations.
2. Increase the number of judges. The number of judges must be doubled, at least.
3. Expanding the sphere and number of model courts.
4. Inter-institutional accountability for judges.
5. Ultimately, it is the constitutional duty of the superior courts to oversee day to day proceedings being conducted in the lower courts and arrange for continuous training sessions.
6. Similarly, Austin's command sanction theory should also be employed in order to make the learned judges work properly. The threat of being removed from office for poor performance would be enough for most of them to work.
7. Ethical training is also essential for judges. It needs to be instilled into the hearts of the judges that every stroke of their pen, each day, writes the fate of hundreds. Somebody is deprived of their rights whereas sometimes some are rewarded with what is rightfully theirs.
8. The government should set up a free judicial assistance service which will ensure to provide legal help to those poor litigants who cannot afford exorbitant fees of lawyers.
9. The government should set up more criminal courts at district and Tehsil level to provide cheap and speedy justice at grassroots level.

10. For a speedy and fair trial, Pakistan needs a separate special investigation department in the police. It shall be under the direct supervision of district police officer, but their main duty shall be confined to investigations. Qualification should be a degree in law and such a police shall be trained by competent judges and lawyers in judicial academies to teach them special techniques and skills. A collection of evidence by such police will be authentic and accurate and will facilitate a judge to reach a decree.
11. Subordinate judiciary in Pakistan at the district level is itself a hurdle in the way of speedy justice. It's hosting three kinds of problems like insufficient number of judges, recruitment of inexperienced officials or functionally illiterate judges with no specialisation over the civil or criminal branch.
12. Specialisation and expertise over criminal or civil branches of law are also a point of great concentration. Such options shall be given to them on the initial phase of training in judicial academies to pick one field of their choice willingly and then, expert lawyers of relevant fields (civil/criminal) shall be called in to guide and teach them about the technicalities. They shall perform their duties in the specialised field till retirement. This will significantly help in the speedy delivery of justice.
13. Most judges in district courts are fresh graduates of law having no vigorous practical experience as a lawyer. Such fresh graduates face problems in dealing with complications of cases of complex technical nature. Hence, a mechanism is required to be devised for this problem.
14. Time limitation for a declaration of the decree for both civil and criminal cases needs to be introduced. For this purpose, our parliamentarians are required to do a legislation in which they specify a specific time for judges for case remedies and bind them not to postpone unnecessarily. The specific time must be reasonable, not too short to defeat the maxim, "Justice hurried is justice buried," and not so lengthy to defeat the concept of "Justice delayed is justice denied". Such kind of legislation shall also bind the lawyer fraternity to represent its plaintiffs on the day of hearing strictly.
15. Protection of judges and their families is crucial, especially in sensitive or high profile cases.
16. The introduction of protection of witness programme is also critical, especially in criminal cases in line with the model of the US Witness Security Program (WITSEC), which is protected under Organized Crime Control Act of 1970. The roles of witnesses in criminal and civil cases is that of a backbone. In the event of non-protection, witnesses prefer to avoid providing testimonies out of fear.
17. The inherent power of adjournments of proceeding should be used very rarely. It should be only allowed in exceptional cases and then not more than once.
18. The incumbent chief justice of Pakistan with the help of government is required to take the problem of delayed justice seriously and discuss it with bars, eminent jurists and lawyers to derive out a permanent solution for it.
19. Using Probation as an alternative to conviction will also reduce burden and pressure form court system and help first-time offenders re-integrate into society again.

ALTERNATE DISPUTE RESOLUTION (ADR)

It goes without saying that only the higher judiciary in Pakistan has the potential and authority to direct and motivate the lower courts and other state institutions to realize the full potential of the Alternate Dispute Resolution (ADR). In order to achieve this following recommendations are made:

(a) A country wide training programmes (preferably of 3 years) should aim to train the district judiciary, the police and ADR neutrals, etc.

(b) The Alternate Dispute Resolution Act, 2017, a federal law on the subject may either be extended to the whole of Pakistan or provinces should replicate it.

(c) The law on Dispute Resolution Committees (DRCs) be refined and implemented in KPk and Balochistan as the concept of Jirga has wide acceptance in the two provinces.

(d) Establishment of ADR training centres preferably in the judicial academies under the direct supervision of the Supreme Court and the provincial High Courts.

(e) Identify and establish "conduct standards" for the personnel conducting ADR and mechanisms for quality assurance.

(f) Mediation Centres and Institutes of Arbitrators and Mediators need to be established in all provinces.

(g) The federal and provincial governments should allocate budget and create infrastructure to utilize the arbitration and reconciliation forums in a three-year phased programme. The budgetary allocation may also include the recurring/operational expenditure.

(h) The district judiciary should ensure that all judges refer minor offences and disputes to the relevant courts that already exist under the law for the arbitration and reconciliation.

(i) The superior judiciary should develop strong monitoring mechanisms to ensure that all federal, provincial and judicial authorities discharge their roles and duties as laid down in the existing ADR laws.

(j) The Federal government and the respective provincial governments shall develop rules, SOPs and strong monitoring mechanisms to govern functioning of the ADR, as they would be dealing with the rights and liberties of the citizens. Any step of the procedure not legally covered is likely to create problems in the courts of law.

CONCLUSION

Without doubt, the judicial process needs significant reform, and a process must begin of not just identifying the flaws and problems in the justice system but recommending sensible and implementable solutions. Indeed, the judicial activism of the superior judiciary has helped expose the many deficiencies in the overall judicial system: a well-functioning system that provides justice at the grassroots level should not require high court and Supreme Court judges to arbitrarily intervene on behalf of petitioners and litigants. Yet, if sensible reforms are to be suggested and implemented, the legal community will need to address tensions between the lower and superior judiciary, and the bar and bench too.

QUESTION 12

PRISONS

Q. How far recidivism has been limited by the institution of prison? Explain some of the modern strategies used in prison for the restoration and reintegration of criminals. (CSS-2019)

Q. The prisons in Pakistan are not reforming the prisoners rather they are making the prisoners resistant to change. Discuss.

ANSWER

INTRODUCTION

In the broadest sense, correctional agencies include community supervision or probation, various types of incarceration (including jails, houses of correction, and prisons), and parole programmes for both juvenile and adult offenders. These programmes range from the lowest security, such as probation in the community with minimum supervision, to the highest security, such as 24-hour lockdown in an ultra-maximum security prison. Corrections ordinarily represent the post-adjudicatory care given to offenders when a sentence is imposed by the court and the offender is placed in the hands of the correctional agency.

CRITICAL ANALYSIS OF CORRECTION AND IMPRISONMENT OPTIONS

The fact that crime rates have dropped while the prison population has boomed supports incapacitation as an effective crime control policy. This assumption seems logical considering how much crime chronic offenders commit each year and the fact that criminal opportunities are ended once they are behind bars. While it is difficult to measure precisely, there is at least some evidence that crime rates and incarceration rates are interrelated. Economist Steven Levitt concludes that each person put behind bars results in a decrease of 15 serious crimes per year. He argues that the social benefits associated with crime reduction equal or exceed the social and financial costs of incarceration. While Levitt's argument is persuasive, but not all criminologists buy into the incapacitation effect.

On the other hand, there is little evidence that incapacitating criminals will deter them from future criminality and even more reason to believe they may be more inclined to commit crimes upon release. The more prior incarceration experiences inmates have, the more likely they are to recidivate (and return to prison) within months of their release.

By its nature, the prison experience exposes young, first-time offenders to higher-risk, more experienced inmates who can influence their lifestyle and help shape their attitudes. Novice inmates also run an increased risk of becoming infected with AIDS and other health hazards, and that exposure reduces their life chances after release. The short-term crime reduction effect of incapacitating criminals is negated if the prison experience has the long-term effect of escalating frequency of criminal behaviour upon release.

The economics of crime suggest that if money can be made from criminal activity, there will always be someone to take the place of the incarcerated offender. New criminals will be recruited and trained, offsetting any benefit accrued by incarceration. Imprisoning established offenders may likewise open new opportunities for competitors who were suppressed by more experienced criminals. Incarcerating gang members or organized crime figures may open crime and illegal drug markets to new groups and gangs who are even hungrier and more aggressive than the gangs they replaced.

Most criminal offences are committed by teens and very young adult offenders who are unlikely to be sent to prison for a single felony conviction. Aging criminals are already past the age when they are likely to commit crime. As a result, a strict incarceration policy may keep people in prison beyond the time they are a threat to society while a new cohort of high risk adolescents is on the street.

An incapacitation strategy is terribly expensive. The prison system costs billions of rupees each year. Even if incarceration could reduce the crime rate, the costs would be enormous. Are Pakistan's taxpayers willing to spend billions more on new prison construction and annual maintenance fees? A strict incarceration policy would result in a growing number of elderly inmates whose maintenance costs would be an extra burden on the national exchequer.

Relying on incapacitation as a crime control mechanism has resulted in an ever-expanding prison population. Eventually most inmates return to society in a process referred to as re-entry. In most states, prison inmates, especially those convicted of drug crimes, have come from comparatively few urban inner-city areas. Their return may contribute to family disruption, undermine social institutions, and create community disorganization. Rather than act as a crime suppressant, incarceration may have the long-term effect of accelerating crime rates.

RECIDIVISM

Recidivism means the tendency of a convicted criminal to re-offend. In other words, recidivism means re-offending by a prisoner after serving a sentence in prison. Recidivism has been a major problem for criminal justice system of Pakistan. Most of the crimes are committed by the people who have already served their sentences in prisons. It clearly means that the jails or prisons which are meant to reform the prisoners are not performing their functions properly.

ISSUES AND PROBLEMS IN PAKISTAN'S JAILS AND CAUSES OF RECIDIVISM

1. Overcrowding of prisons where there are more prisoners than capacity.
2. Gangsters operate in prisons
3. Availability of drugs in jails
4. Inhuman and humiliating treatment of prisoners by the jail staff
5. Physical and psychological Torture
6. Sexual harassment
7. Criminal Labelling by society after the prisoner comes back from jail.
8. Lack of job opportunity:
   - The government disqualifies the convicted prisoners
   - The private sector also does not give jobs to convicted people because of fear.
9. Parole is hardly used as an alternative to imprisonment in Pakistan.

SUGGESTIONS AND MODERN STRATEGIES TO REFORM PRISONS AND CONTROL RECIDIVISM

Modern strategies for reintegration and restoration of prisoners include:

1. General education to prisoners during their stay at prison.
2. Ethical education for prisoners
3. Job and earning opportunities after coming out of jail
4. Skill education or vocational training to prisoners so they might find jobs when they come out.
5. Discouragement and penalty for criminal labelling of convicted people after serving the sentence. It will help the convicted people to respectfully re-integrate into society again and avoid criminal careers.
6. Ethical training of the jail police staff.
7. Accountability of the jail staff for bribery and corruption.
8. Action and operation against the gangsters operating in the prison.
9. Ensuring unavailability of drugs in jails.
10. Making sure that the heinous crimes prisoners and other minor crimes prisoners do not intermingle in jails.
11. Using parole as an alternative for early release of prisoners. Aged prisoners and juvenile prisoners must be given preference for release on parole.

QUESTION 13

PROBATION AND PAROLE IN PAKISTAN

Q. Probation and Parole. (Short Note CSS-2017)

Q. Define the term Probation. Discuss the conditions of probation. (CSS-2016)

Q. What are the issues and problems in utilization of Probation and Parole in Pakistan? Suggest measures for reforming the probation and parole system of Pakistan.

ANSWER

INTRODUCTION

Probation and Parole are procedures for release of adjudicated delinquents or convicted offenders on a conditional basis in order to assist them in pursuing a non-criminal life, with the proviso that they may be committed or returned to a correctional institution if their behaviour after release fails to meet standards of the releasing authority. If granted by a court as an alternative to conviction this release is generally called probation. If granted by government to someone who already has served part of a term of confinement this release is usually called parole in Pakistan and the United States, and licence in Britain. These provisions were primarily promulgated for the benefit of "first time" and offenders seen as able to reform who are capable of leading a useful and productive life so as to minimise their chances of becoming hardened criminals due to the effects of imprisonment.

HISTORY OF PROBATION AND PAROLE IN PAKISTAN

After the partition of subcontinent in 1947, Pakistan continued to reinforce the Government of British India's laws for maintaining the probational aspect of the criminal justice system. It included the Good Conduct Prisoners Probational Release Act, 1926, and sections 380 and 562-564 of the Indian Code of Criminal Procedure. Later on, the Indian Code was renamed the Criminal Procedure Code. Reclamation and Probation Departments (RPD) were established in all provincial governments in 1927, to deal with the release of prisoners on parole. After independence, Punjab was the only province in Pakistan that had a RPD in place. The rest of Pakistan established RPDs in 1957. The Good Conduct Prisoners Probational Release Act, 1926 was effective in providing an opportunity for convicted prisoners who demonstrated good conduct for social reintegration through early conditional release, however its scope was limited in addressing the early conditional release of prisoners with short-term sentences. The colonial government of British India tried to pass separate legislation on probation. In 1931, the All India Probation Bill was drafted and was circulated to all the provincial governments for their comments, however the Bill was not passed into law mainly due to the political crisis in the country associated with the ongoing independence movement. After independence in 1947, the Government of Pakistan passed legislation on probation, namely the Probation of Offenders Ordinance, 1960/Rules, 1961. The Probation of Offenders Ordinance, 1960 is largely an amended version of the 1931 Probation Bill. However, it mandates the RPDs to establish the probation arm of the department and enabled probation officers to be appointed for offenders on trial before the courts.

Recently, another development took place when the government of Pakistan repealed the Juvenile Justice System Ordinance, (JJSO) 2000 and replaced it with the Juvenile Justice System Act, (JJSA) 2018 in compliance with its international obligations of the United Nations Convention on the Rights of the Child. Section 11 of the JJSO highlights the release of juvenile offenders on probation.

BAIL – PROBATION – PAROLE IN CJS OF PAKISTAN

In the existing criminal justice system of Pakistan alternatives to imprisonment have their legal basis at the pre-trial stage in the form of bail; at the sentencing stage with fines and probation; and at the post-sentencing stage with parole. The public are comparatively more familiar with the term bail and it is the most commonly exercised non-custodial measure in court settings. In contrast, probation and parole services are the least practised alternative, depriving people in conflict with the law of their inherent right to freedom, family life and of becoming productive citizens of society again.

In recent decades, the retributive model of punishment is losing ground to the more humane models of community rehabilitation and restorative justice, which are often more effective at reducing re-offending, and enhancing the importance of non-custodial sanctions that serve the best interest of the offender and the victim. Evidence suggests that successful community reintegration of an offender also benefits the community in terms of safeguarding them from the negative impacts of crimes as well as giving better value of taxpayers' money in comparison to public expenditure on an offender in prison.

STRUCTURE AND FUNCTIONING OF PROBATION AND PAROLE SYSTEM IN PAKISTAN

As an alternative to imprisonment, release of prisoners on probation and parole is managed by provincial Directorates of Reclamation and Probation working as departments attached to the provincial Home Departments in Punjab, Sindh, Balochistan and Khyber Pakhtunkhwa. Each Provincial Directorate is headed by a Director of Reclamation and Probation (R&P) supported by Deputy Directors and Assistant Directors, probation and parole officers, office superintendents and other administrative and support staff. The overall mandate of the Directorates of Reclamation and Probation include: to 'kill the crime not the criminal'; to reduce overcrowding in prisons; to cut down government expenditure on prisons; and to rehabilitate and reintegrate offenders as law-abiding citizens. However, a lack of political will, inadequate human/skilled resources and weak infrastructure are hindering their potential to play an effective role in the criminal justice system of Pakistan.

LAWS FOR PROBATION AND PAROLE IN PAKISTAN

Provincial differences do exist in the distribution and designation of staff, however overall functioning is identical and governed by the legal instruments of:

- Probation of Offenders Ordinance (XLV of 1960); and the West Pakistan Probation of Offenders Rules, 1961
- The Good Conduct Prisoners' Probational Release Act, 1926; and the Good Conduct Prisoners' Probational Rules, 1927
- Juvenile Justice System Act, 2018

PROBATION

Under the Probation of Offenders Ordinance, 1960, *probation is the suspension of the imposition of a sentence of imprisonment or the postponement of final judgment in a court case.* It is a judicial warning given to an offender for non-serious offences for the opportunity to reform him/herself and commit no more offences, as well as be subject to additional conditions which may be imposed by the court and under the supervision and guidance of a probation officer.

The Probation of Offenders Ordinance, 1960 now contains 15 sections. According to section 3, the following courts are empowered to exercise the power under the said ordinance:

1. High Court
2. Court of Session
3. Judicial Magistrate
4. Any other magistrate specially empowered

Before making an order for conditional discharge, the court shall explain to the offender in ordinary language that if he commits any offence or does not remain of good behaviour during the period of conditional discharge he will be liable to be sentenced for the original offence.

CONDITIONS OF PROBATION

1. Probation is granted by courts during trial stage before conviction.
2. It is given to offenders involved in minor offenses.
3. Probation is granted to first-time offenders.
4. It is granted after the submission of Social Investigation Report (SIR) of the probation officer.
5. During the probation period, the probationer remains under the supervision of the probation officer appointed.
6. The probation is granted for a specified time.
7. Probation is also area-bound which means that the probationer is supposed to live in the specified areas or city.
8. And the probationer also assists the probationer to find a job and secure a source of livelihood.
9. The case is not discharged during the probation period, rather it is put to freeze.
10. If the probationer commits an offense during the probation period, he or she will be brought back and the previous case will also be completed.

FUNCTIONS AND ROLE OF PROBATION OFFICERS

A detailed list of all the functions by a Probation Officers has been given in the Probation of Offenders Ordinance 1960, Section 10 which are

(a) Explain to every probationer placed under his charge, the terms and conditions of the Probation order made in respect of such probationer, and if so deemed necessary, by warnings, endeavour to ensure their observance by the probationer;

(b) In the first 2 months of probation of every probationer under his charge, meet the probationer at least once in a fortnight, and thereafter, subject to the provisions of the Officer in Charge, keep in close touch with the probationer, meet him frequently, make enquiries into his conduct, mode of life and environments, and wherever practicable, visit his home from time to time;

(c) If any probationer under his charge be out of employment, endeavour to find suitable employment for him and assist, befriend, advise and strive to improve his conduct and general conditions of living;

(d) Encourage every probationer placed under his supervision to make use of any recognized agency, statutory or voluntary, which might contribute towards his welfare and general well-being, and to take advantage of the social, recreational and educational facilities which such agencies might provide;

(e) Where a probationer under his supervision, who has executed a bond, with sureties under section 5, is found to have committed any breach of the terms of his bond, or to have otherwise misconducted himself, to bring such breach or misconduct to the notice of his sureties;

(f) Maintain the books and registers and submit reports prescribed under these rules; and

(g) Subject to the provisions of these rules shall carry out the instructions of the Court in regard to any probationer placed by the Court under his supervision.

SIR AND ROLE OF PROBATION OFFICER

Once released on probation, the concerned probation officer is to supervise, monitor and facilitate rehabilitation of the offender in the community. In practice, however, a probation officer's role is ineffective in the rehabilitation of offenders due to an inadequate institutional and personal capacity. The probation officer has been assigned an important role in the whole process of preparing and submitting the "social investigation report" (SIR) to the court. On the directive of the court, a probation officer prepares a SIR that includes information about an offender's character, background, commission and nature of offence, home surroundings and other circumstances. In practice, the court put a majority of the cases directly on probation without a formal SIR. Such practices on the part of the court need further exploration as this might be either due to the small number of probation officers, the lack of confidence the court has regarding the professional abilities and skills of probation officers or the time it takes to provide one, as in a large number of the cases the courts release people on probation upon confession without asking probation officer for SIR. Whatever the case may be, the court has the powers to decide whether to put an offender on probation or to decide against it. SIRs are prepared to assist the courts to arrive at an appropriate decision.

LENIENCY TOWARDS FEMALE OFFENDERS

The probation law is applicable to both male and female offenders, however the law is more lenient towards female offenders. In addition to the offences punishable by death or life imprisonment, the probation law is not applicable to male offenders convicted of offences of heinous nature as described in the Pakistan Penal Code, 1860 under the following sections:

216 – harbouring robbers or dacoits.

311 – being a thug.

328 – causing hurt by means of poison etc, with intent to commit an offence.

346 – kidnapping or abducting in order to murder.

382 – theft after preparation made for causing death, hurt or restraint in order to commit the theft.

386 – 389 - putting a person in fear of injury or death in order to commit extortion.

392 – 402 - commitment of robbery, dacoity or belonging to a gang of thieves.

413 – habitual dealing in stolen property.

455 – house-trespass or house-breaking after preparation for hurt or assault.

460 – where several persons are jointly concerned in house-trespass or house breaking by night and death or grievous hurt was caused by one of them.

Chapter VI – offences against the state.

Chapter VII – offences relating to the Army, Navy and Air Force.

Offence of Zina Ordinance 1979 – offences of rape, adultery and fornication.

Offence of Qazf Ordinance 1979 – offence of false accusation of zina (rape)

In contrast, female offenders are eligible for a probation order in all offences except offences punishable by the death penalty.

PAROLE

Parole refers to the conditional release of prisoners or offenders in certain cases before the completion of the term of imprisonment to which they have been sentenced. With parole the prisoners serve the last portion of their sentence in the community after completing a mandatory period of substantive sentence in prison as required under the Good Conduct Prisoner's Probational release Act, 1926 and Rules 1927.

CONDITIONS OF PAROLE

1. Parole is granted by provincial government during imprisonment.
2. It is given to offenders involved in in minor offenses.
3. Parole is granted to first-time offenders.
4. The Prisoner or his or her family can apply for parole. The Parole officers and jail superintendent can also recommend the prisoner for parole.
5. During the parole period, the parolee remains under the supervision of the parole officer appointed.
6. The parole is granted for a specified time.
7. It is also area-bound which means that the parolee is supposed to live in the specified areas or city.
8. And the parole officers also assist the parolee to find a job and secure a source of livelihood.
9. The case is not discharged during the parole period, rather it is put to freeze.
10. If the parolee commits an offense during the parole period, he or she will be brought back and the previous sentence will be completed and the new crime would also be prosecuted.

WHO GIVES PAROLE?

Under these rules, the Executive (Home Secretary) of the province is empowered to release certain offenders on parole. When the provincial government is satisfied that a prisoner's track record or good conduct behind bars suggests that he or she would likely abstain from crime and would lead a "useful and industrious life" in the community, it may grant a license of release on the condition that the prisoner remains under the supervision of a parole officer or a "secular institution or of a person or society professing the same religion as the prisoner."

SUPERVISION OF PAROLE OFFICERS

The parolees, under the supervision of a parole officer, are employed on fixed wages and under specific terms and conditions with the approved employers of the respective provincial R&P Directorates. Any person or institution can apply to be a potential employer to the R&P Director who, after proper scrutiny and on the recommendations of the relevant district administration where the potential employer belong to, decides whether to approve the employer or reject the application if it does not fulfil the selection criteria. The required standards for the employer include: to be resident of the same province, being of a good repute, not involved in any illegal trade/activities, being able to provide accommodation, clothes, food and wages to the parolee.

SELECTION FOR PAROLE

Prisoners may be selected for parole on an application by themselves or their family members; or on the recommendation of the Superintendent of the jail. The Assistant Director and parole officer are also authorised to visit the jails to select suitable prisoners for release on parole. The evidence shows that these visits are not frequently carried out due to a low number of parole officers and weak coordination between prison management and the parole officers. In most of the districts, the probation officers have been assigned additional duties of a parole officer to cover the issue of under-staffing.

FUNCTIONS OF A PAROLE OFFICER

After the release of prisoners on parole, functions of the parole officer include supervision and rehabilitation of offenders, periodic visits to parolees, collecting wages and submitting reports to his/her supervising officer (for example to the Assistant Director R&P about a parolees work performance) and to process any complaints.

SCOPE OF PAROLE SYSTEM

The parole system is primarily based on the Good Conduct Prisoners' Probational Release Act, 1926 and its Rules, 1927; and executive orders for implementation. Some of the provisions/executive orders limit its scope and need addressing, for example: parolees must be employed a minimum of 45 miles away from their immediate families and can meet their families by taking casual leave with the approval of the relevant parole officer. The parolee becomes eligible for casual leave after completion of the first six months of the parole period. This is a clear violation of the right to family life and contradicts the basic philosophy of community reintegration of the prisoner released on parole.

DIFFERENCE BETWEEN PROBATION AND PAROLE

Probation and parole both serve the purpose of community rehabilitation and reintegration of offenders. The main structural and procedural differences between the two non-custodial sanctions are: probation is given by the judiciary while parole is authorised by the Executive; probation refers to suspending the sentence or postponement of decision while parole is given in the last portion of the sentence after a prisoner's has completed mandatory imprisonment; and the judiciary is responsible for probation revocation while parole revocation is made by the Executive.

BENEFITS OF PROBATION AND PAROLE

Most the prisoners in Pakistan's jails are related to minor offences. The probation and parole, if used for minor offenders, can grant multiple benefits for offenders as well as the criminal justice system.

(a) Benefits and Advantages of Probation

- Probation gives a chance for a minor offender to reintegrate into society and reform their behaviour.
- It also prevents contact of probationer with the convicted prisoners.
- If sent on probation, the probationer can avoid exposure to jail atmosphere.
- The probationers can rejoin the society and keep sustaining their family economically.
- Probation also prevents offenders from being labelled by the society with criminal labels. Post-conviction labelling increases chances of secondary deviation of offenders.
- Probation option also reduces burden of cases from courts.
- It also reduces number of prisoners sent to prisons.

(b) Benefits and Advantages of Parole

- Parole offers convicted prisoners a chance to spend their remaining sentence in society.
- In this way, they have to spend less time in jail atmosphere with convicted felons.
- In Pakistan the majority of the prisons are overcrowded, which contributes to the emerging issues of poor health and hygiene, high risk behaviour (e.g. suicide, unprotected and forced

sexual contact, and use of drugs), and poor prison management leading to torture, riots and corruption.

- The lack of proper rehabilitation services also puts prisoners at a high risk of re-offending, particularly criminalising first time offenders or those who have committed minor offences.
- According to the Human Rights Commission of Pakistan, about 64% of the total prison population are remand prisoners awaiting their court decision.
- An effective and efficient probation and parole system can play a vital role in community rehabilitation of offenders and reducing the prison population, which in turn contributes to better prison management and the overall improvement of prison conditions.

WHY PROBATION AND PAROLE ARE NOT GRANTED? PROBLEMS IN EXISTING SYSTEM

The judges say that there is too inefficiency and corruption in the probation department. The officers are bribed and they keep submitting good reports to the court despite evidence that the probationer is engaged in suspected activity during probation period. Some probation officers do not keep proper supervision of the probationers.

Similarly, the Parole officers also suffer from inefficiency and corruption. Many parole officers do not visit prisons to check the record of prisoners. Lack of government transport facility to probation and parole officers is another concern which hinders their effective role of supervision.

Probation is the supervision of a suspended sentence or postponed final judgment of the court which does not require deprivation of liberty and where the offender is sent back to community for a period of not less than one and not more than three years. The probation officer on the directives of the court prepares a SIR to assist the court in reaching a decision regarding whether or not the offender is released on probation. In the context of parole, it is the early conditional release of a good conduct prisoner in the last part of his/her imprisonment under the supervision of a parole officer.

The probation system becomes active once a trial begins. It has no assigned role under the law at the pre-trial stage of criminal proceedings to provide or monitor alternatives to pre-trial detention or offer mediation; with the exception of the Juvenile Justice System Ordinance, 2000 where the probation officer has some role to play at the police station level. It is stated that at the time of arrest the officer in charge of the police station in which the child is detained shall, as soon as may be, inform.

- the guardian of the child, and
- the concerned Probation Officer to enable him to obtain such information about the child and other material circumstances which may be of assistance to the juvenile court for making inquiry.

In practice there are no such precedents where police have contacted probation officers at the time of arrest of a juvenile. Evidence shows that most of the police are even unaware of the very existence of probation officers.

SUGGESTIONS AND RECOMMENDATIONS

1. Provincial governments must encourage their respective Probation and Reclamation Departments and focus on creating awareness among stakeholders regarding the probation system and also about the probation as an effective alternative to the detention and incarceration of offenders, including child and women offenders.
2. Efforts should also be made to bridge the gap between the judiciary, police and the probation department.

3. The provincial and federal judicial academies should play an active role in creating widespread understanding about the utilization of the probation system.
4. The provincial governments should make a comparative analysis of the budgetary allocation for Probation and Prisons departments and their outcomes, and increase budgetary allocations for these.
5. Regular trainings for R&P personnel. It is recommended that chapters on probation and parole system should be added to the training curriculum of judicial academy, police training academies and to update the syllabus of the National Academy for Prison Administration.
6. The R&P Directorates should make monthly visits of parole officers compulsory on part of the R&P senior management. It also puts an obligation on prison management to make best use of parole services in order to reduce overcrowding in prisons.
7. Implementation of the Juvenile Justice System Act, 2018 needs to be improved. Special Juvenile Courts and panels of lawyers for free legal aid must be constituted and made functional as a priority.
8. Alternate Dispute Resolution (ADR) has strong roots in Pakistani society in the form of Jirga, Punchayat. The Reconciliation Committee will be very effective in victim-offender mediation if linked with diversion projects.
9. Releases of prisoners on parole are comparatively lower than releases of offenders on probation. Obvious reasons include the low number and less exposure of parole staff to prison settings; The R&P Directorates should make monthly visits of parole officers compulsory in their respective yearly activity planner supported by regular supervision meetings on part of the R&P senior management. It also puts an obligation on prison management to make best use of parole services in order to reduce overcrowding in prisons.
10. Pilot projects on probation through public-private partnership should be developed in specialized sectors, for example, juveniles in conflict with the law, substance misusers and women in prisons. For instance, by designing a diversion project for first time juvenile offenders integrating police, probation, district judiciary, prison, child protection commission, Musalihat Anjumans (Alternate Dispute Resolution Committees), human rights directorate, social welfare department and other skill training institutes in the best interest of the offender and victim.
11. Similarly, pilot projects can be started for drug dependent persons to be diverted into drug treatment and rehabilitation facilities under the supervision of a probation officer from the level of police station and courts. Women prisoners with minor children also require our special attention and such non-custodial probation-led projects would provide women offenders equal opportunities to better reintegrate into community not only for their own self but also for their children and loved ones.
12. In the government hierarchical service structure, probation and parole officers stand as a universal constant, hired and retired in the same grade most of the time. The R&P department unlike other government departments lacks proper service structure which manifests itself in the form of demotivated staff always looking for other job opportunities with good service structure resulting in loss of skilled manpower.
13. Among the government department, R&P department remains a low priority area when allocating financial resources.

14. Data collection and data management is another area that needs to be a focus for effective service delivery and research purposes. Development of an extensive database system will also help the key criminal justice partners in sharing valuable information about offenders to ensure public safety and reduce recidivism.

CONCLUSION

It is encouraging that releases on probation have increased in recent years particularly in cases of child offenders; however, practice shows in most of the cases release orders are issued in cases where the state is the party, e.g. narcotics offences. Cases in which a private party is a victim, the courts exercise considerable restraint to the extent that even inappropriate cases the courts do not pass orders for release on probation due to the apprehension that the victim may take the law into its own hands and resort to revenge outside the court . The overriding influences of special laws like the Anti-Terrorism Act further limit the practice of non-custodial sentencing.

QUESTION 14

CRIMINAL INVESTIGATION

Q. What is Criminal Investigation? Explain the key principles of criminal investigation. (CSS-2018)

Q. Write a comprehensive note on the Principles of Criminal Investigation. Illustrate with examples from Pakistan. (CSS-2017)

Q. Elaborate importance of legal and ethical guidelines for the criminal investigation of gender-based crimes. Support your answer with examples from Pakistani society. (CSS-2017)

Q. Enlist and discuss the Principles of Criminal Investigation. (CSS-2016)

Q. Define Criminal Investigation. What are the problems and issues in criminal investigation process in Pakistan? Also suggest remedial measures to reform the criminal investigation process.

ANSWER

INTRODUCTION

Investigation is the most important phase in a criminal case. Criminal investigation is responsible to prove guilt of accused beyond reasonable doubt and accused is presumed to be innocent and cannot be convicted in absence of trustworthy, confidence-inspiring evidence. This high standard of proof can only be achieved if evidence is properly collected, secured and documented at stage of investigation so that it can later on be produced in court to prove charges against accused. Its importance can be estimated from the fact that any evidence either not collected by investigating officer or not collected in accordance with the prescribed law and rules can directly affect the result of trial. Courts in any Criminal Justice system are not involved in collecting evidence, it is the exclusive domain of investigating officer (IO). Functions of court are to draw inference from evidence and then conclude either an offence has been committed or to give judgment that a particular person is not guilty.

DEFINING INVESTIGATION

- Criminal investigation is defined as "The collection of information and evidence for identifying, apprehending, and convicting suspected offenders."
- In legal terms investigation includes all the proceedings for the collection of evidence conducted by a police officer or by any person who is authorized by a Magistrate in this behalf.
- A good investigation is a rigorous process that consist of identification, collection, preservation and presentation of evidence in court of law.
- Investigation means scrutiny, search or an inquiry into a matter to find out truth, to know about facts or solve crime case.

NATURE OF INVESTIGATION

Investigation

- Is a multidisciplinary approach.
- Involves systematic and logical thinking.
- Requires minutes and detailed inspection.
- Includes observation, examination and fact-finding inquiry of witnesses.
- Is a rigorous quest for inculpatory or exculpatory evidence.

DIFFERENCE BETWEEN INVESTIGATION AND INQUIRY

Code of Criminal Procedure 1898 draws distinction between investigation and inquiry.

Section 4(l) of Code of Criminal Procedure defines investigation as following:

"Investigation includes all the proceedings under this code for the 'collection of evidence' conducted by a police officer who is authorized by a Magistrate in this behalf."

Whereas Section 4(k) states as under:

"Inquiry includes 'every inquiry other than a trial' conducted under this Code by a Magistrate or Court."

GOALS OF INVESTIGATION

1. To Recognize Evidence

This is done by a detailed survey and research of crime scene. Everything that is present on a crime scene may or may not have a probative value; an investigator must be able to recognize what evidence can be helpful and what should be collected.

2. To Collect Evidence

Most of the crime scene involves massive physical evidence that can be collected by the investigator to be later produced in court i.e., empty cartridges, DNA, fingerprints and other trace evidence, etc.

Evidence must be labelled properly describing FIR number, nature/type of evidence, position and place of its collection, time date and name of witness in whose presence such evidence was collected.

3. Preservation of Evidence

It is as essential as collection of evidence because if integrity of evidence is compromised it cannot be made basis for conviction of accused. To achieve this goal chain of custody must be maintained.

Chain of custody is described as chronological log of handling of evidence from place of seizure/collection to its presentation in the court of law. It implies principle that there should be no unauthorized handling of evidence at any stage.

4. Documentation of Crime and other Proceedings

(a) Recording of statement of eye-witnesses must be done at crime scene and witness must be separated before recording their statement eliminating possibility of fabrication.

(b) Crime sketch that can be scaled or unscaled. But it must show important landmarks, presence of accused and witnesses if any.

(c) Modern techniques involve crime scene photography at different range, angle and even videography can be done.

(d) First inspection note.

(e) Preparation of inquest report, injury statement in cases of murder.

POWERS OF POLICE OFFICERS UNDER CRPC REGARDING INVESTIGATION

(i) Under section. 156 of the Code of Criminal Procedure, 1898, a police officer is authorized to conduct investigation in cognizable cases without order of the Magistrate.

(ii) A police officer may by order in writing require the attendance of any person who from information given or otherwise appears to be acquainted with the circumstances of the case u/s 160 Cr.P.C.

(iii) Under section 161 Cr.P.C. a police officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(iv) Police officer shall day by day enter his proceedings in investigation diary u/s 172 Cr.P.C.

AUTHORITY TO INVESTIGATE

Another important aspect of criminal investigation is 'authorization'. A person cannot assume the role of investigator. Investigation can only be done by a police officer or a person authorized by a Magistrate.

WHAT IS EVIDENCE?

Evidence means "anything that tends to prove or disprove anything". In strict sense of Qanun-e-Shahadat Order, 1984, evidence includes:

1. All statement which the court permits or requires to be made before it by witness in relation to matters of fact under inquiry; such statements are called Oral Evidence.
2. All documents produced for the inspection of the court, such documents are called Documentary Evidence.

Cr.P.C. limits the scope of investigation only to collection of evidence; an investigating officer is confined only to collect evidence without formulating any opinion as to guilt or innocence of accused.

HISTORY OF CRIMINAL INVESTIGATION IN PAKISTAN

As the subcontinent was the colony of British government, the prevailing criminal investigation system has its roots in British System of Police which they introduced in India as their colony. The name Criminal Investigation Department was first used for the detective branch of the Metropolitan Police London in 1878. But the suggestion for establishing criminal investigation department in the provinces of the Indo-Pak subcontinent came from the Police commission of 1902-3. In Punjab the department was set up in 1905, with Sir Edward Lee French as its first Deputy Inspector General. Various methods were applied to investigate the crimes including fingerprints, foot-tracking, forensic laboratories and sniffer dogs. The first forensic laboratory was established in Lahore in a photographic section of the criminal investigation department in 1930.

All over the world especially in technologically advanced countries, crime control agencies are adopting new methods to investigate crime through latest criminal investigation techniques. But in Pakistan the methods of criminal investigation are mostly the same as were in the past.

WHICH LAWS GUIDE INVESTIGATION PROCESS IN PAKISTAN?

In Pakistan investigation of offences under Pakistan Penal Code, 1860 is conducted under Part V, chapter XIV of code of ***Criminal Procedure Code 1898*** and ***Police Rules 1934***. In case of offences created under special laws, there is separate law that regulates procedures of investigation e.g., anti-corruption and anti-terrorism court, Federal Investigation Agency, etc.

BEGINNING AND END OF CRIMINAL INVESTIGATION IN PAKISTAN

Investigation begins with a response to a reported incident, i.e. lodging of FIR u/s 154 Cr.P.C, and ends when it is closed either with the assessment that there is no sound evidence that the crime was committed (cancellation report) or with the submission of one or more reports describing what was done (submission of challan in Court through prosecutor).

FIRST INFORMATION REPORT

This crime report is called "First Information Report" which commonly is known as FIR. If crime committed is cognizable (felony) the FIR would be lodged in the book concerned and investigation will be carried out. But if the crime is non-cognizable (misdemeanours) the FIR will not be lodged in the same book but in an-other concerned book. According to law of Pakistan, FIR is a most important document in a criminal case which furnishes the clue of the possible truth of the allegation against the accused and also cause a firm impression of the prosecution case. It is a statement which is made soon after the incident, when the memory of occurrence is fresh.

After registration of FIR, police is duty bound to conduct the investigation justly and fairly. When a FIR is lodged the police are required to conduct the investigation procedure that consists of the steps as given under:

(a) Spot and crime scene investigation
(b) Ascertainment of facts and circumstances of case
(c) Discovery and arrest of suspected offender
(d) Collection of evidence
(e) Only an officer In charge of police station has jurisdiction to investigate a cognizable offence

ISSUES IN REGISTRATION OF FIR

In Pakistan when a FIR is registered at Police Station, generally Station House Officer (SHO), who is head of the police station would assign duty to a lower rank officer usually the rank of Assistant Sub Inspector (ASI) or to Sub Inspector to conduct the investigation, who mostly have no proper training or technical experience. What he has experienced during the police job according to that experience he would conduct the inquiry and will prepare a report, regarding that crime, which is called "Challans" and it is submitted to the concerned court.

It is a common tendency in police to avoid registering a case altogether, if unavoidable FIR is registered but the nature of crime is under-stated with application of less severe sections of PPC 1860 from dacoity to robbery and robbery to theft. However, if the complaining party is influential then not only the FIR is registered immediately but the nature of crime can also be exaggerated from theft to robbery and so on.

Most of the SHOs show less incidents of crime in their jurisdiction as compared to their predecessors. Similarly, senior police officials and political leaders also try to understate crime rate in order to show improvement. This unhealthy practice goes all the way up to the provincial governments.

FACT-FINDING TECHNIQUES

Criminal investigation techniques include interviews and interrogations, crime scene photography, surveillance, document searches, and history and background checks.

TYPES OF CRIMINAL INVESTIGATION

There are several types of investigations which police have to carry out. There are as many types of investigations as there are crimes. The police conduct investigation in cases related to crime against persons like homicide, assault and sexual crimes. They also investigate cases related to crime against property like dacoity, robbery, fraud, theft and arson. Cases of social order and morality crimes like gambling, prostitution, vandalism and drug abuse are also investigated by police. NAB investigates crimes related to financial corruption and embezzlement by public servants as well as private citizens. FIA investigates crimes related to human trafficking, money-laundering, fraud (Axact scandal) terrorism and cybercrime and others. ANF is primarily responsible for investigating crimes related to drug trafficking.

PRINCIPLES OF CRIMINAL INVESTIGATION

Throughout the world, Investigation needs to be carried out by certain principles of investigation. Some of these include:

i. Unbiased and Unprejudiced Investigation

The investigation officer must not decide on his own about the guilt of the accused. The whole process must be unbiased and open to test. The evidence should decide whether the accused is guilty or innocent. In Pakistan's context, the investigation process often becomes biased where the investigation officers use their pre-existing values to pre-conclude whether the suspect might have committed the offence or not.

ii. Accuracy

This requires collection and recording of accurate information establishing the facts, whether inculpatory or exculpatory. In Pakistan's case, facts are sometimes distorted and twisted which make the dispensation of justice very hard.

iii. Proportionality

The exercise of legal powers should not be oppressive and should be proportionate to the crime under investigation. The investigation method of a theft case cannot be like the method and procedures used in investigation of a murder case.

iv. Investigative Mindset

The investigation officer is supposed to have an investigative mindset during the investigation process. The IO should try to find the evidence by following an investigative mindset. The investigation officers in Pakistan are very often not trained in developing the investigative mindset required to conduct research-based investigation.

v. Transparency

Investigations should be carried out as transparently as possible – victims, witnesses and suspects should be kept updated with developments in the case. The weaker sections of society in Pakistan are seldom made aware of their legal rights and they are not updated about the case proceedings.

vi. Research and Evidence-based Investigation

The only job of the investigation officer to search for evidence which can determine the guilt or innocence of the accused. Extensive research is needed for this purpose. Instead of this, torture is used to get early confessions.

vii. Seeking Public Cooperation

To get information about the background of the suspect, the investigation officer should seek public cooperation instead of harassing people. The police lack trust of the public in Pakistan and that reduces chances of cooperation by the public.

viii. Protection of Informants and Witnesses

Protection of witnesses and informants is also necessary in order to ensure reliability and credibility of the investigating officer. Or else, people do not tend to stand witness to crime and they deny if they had seen something.

ix. Individualized Investigation

Investigators should take all reasonable steps to understand the specific needs of every individual victim and suspect – investigators should have particular regard for vulnerable people: children, women and elderly.

x. Confidentiality of Investigation Process

Steps should be taken to prevent unauthorized disclosure of information to people not concerned or any other third party. The information of the ongoing investigation is leaked to the media in Pakistan and it leads to the media trial of the accused.

xi. Putting Questions before the Suspect

Even if a suspect does not answer the questions, an investigation officer is supposed to keep putting questions in order to make the suspect talk and communicate. Investigators are not bound to accept the first answer given by the suspect.

PROBLEMS IN CRIMINAL INVESTIGATION IN PAKISTAN

Unfortunately investigation in Pakistan is not conducted properly and thoroughly and is responsible for collapse in Criminal Justice system. Integrity of investigation is very critical for admissibility of evidence in court of law. Major issues in Criminal investigation in Pakistan are:

1. Lack of proper knowledge of prescribed procedures to conduct investigation

(a) Investigation is mostly a failure in Pakistan due to lack of knowledge, proper training and development of skills. Common examples of lack of knowledge and skills that results in failure of investigation are: Lack of knowledge of different provisions of law especially when offence falls under different jurisdictions, e.g. provision of Anti-Terrorism Act, or provisions of sec. 5(2) of Prevention of Corruption Act, 1947.

(b) Lack of knowledge as to offense falls under what jurisdiction and which agency shall hold investigation.

(c) Lack of knowledge of proper procedure, e.g. procedure for proclamation of accused and seizure of property.

2. Lack of Training for Collection of Forensic Evidence

Lack of training to collect biological and other evidence at crime scene and due to improper collection important evidence at crime scene is contaminated before it reaches laboratory for analysis and consequently important evidence is either lost or compromised at crime scene.

3. Arrest Issues

When FIR is registered at police station under section 154 of the Criminal Procedure Code police officer can arrest the person accused in the FIR. According to the same code under section 54, police can arrest anyone directly accused of an offence or against whom reasonable suspicion exists for his having been involved in any cognizable offence. Now what happens that due to these vast powers police can arrest anybody they choose to arrest.

4. Lack of Funds: A Case Study of Islamabad Police

There is a shortage of funds for investigation of criminal cases across Pakistan. Due to the shortage of funds, most of the expenses on investigations had to be borne by the complainants.

(a) In Islamabad Police, according to the standard operating procedure (SOP), Rs. 19, 800 are fixed as the investigation cost of a murder case. But these days at least Rs. 104, 000 are spent on a murder case and the cost increases further if the investigators need to go outside the city for raids or arrest of a suspect.

(b) There are only three draftsmen to draw a crime scene map who charges Rs. 20,000 to Rs. 50,000 per case. Besides, Rs.15,000 are spent on a DNA test. Similarly, Rs. 12,400 are fixed as the cost of investigation in an attempted murder case but at present its investigation needs over Rs. 65,400. The existing cost of investigation of a hurt case is Rs10, 400 but it actually consumes over Rs. 49,700.

(c) Likewise, Rs. 2,600 are fixed for the investigation of a kidnapping and rape case, Rs. 700 for a fatal and non-fatal accident. But Rs. 8,500 are needed for a kidnapping and rape investigation and Rs. 6,500 for an accident case. These official rates were fixed in 2011 and since then they have not been revised.

5. Lack of Professionalism

A major reason for failure of our Justice system is lack of professionalism and irresponsible attitude towards Criminal investigation. Procedures are not followed and adherence to standards is not in existence.

6. Use of torture during investigation

The method commonly used by police in their investigation is the torture which is frequently used everywhere to compel accused to confess the crime committed or not committed. Torture at police stations is applied so severe that men of strong nerves are reported to have confessed to crimes never committed on account of or for the mere fear of torture. Torture is accepted as a standard practice and not always discouraged by the departmental superiors. When person is arrested he is mentally as well as physically tortured in police custody. There are various physical tortures used by police during criminal investigation including slapping on the face, beating by stick on any place of body, torture by fan belt on the ground by laying upside-down or hanged by ropes in the tree or roof of the building, keeping person long time to wake up by using various tactics, pulling out the nails or crossing/pricking of needle below nails, applying of electric current. Sometimes persons are so severally tortured that there are deaths under police custody.

7. External and Political Influences on Investigation

Investigation process is influenced by media, political pressure and corrupt practices. Investigators mostly hold *panchayats* instead of collecting evidence to support charge or establish guilt.

8. Pre-conclusion

Similarly, opinions as to innocence or guilt are given by police officer without reasoning and in absence of evidence. They do not verify alibi of accused if claimed and usually give opinion on basis of suspicion without realizing the fact that determining the guilt or innocence is the duty of the court and investigation is only confined to collection of evidence.

9. Biased Investigation, Lack of Impartiality

Impartiality means decisions must be based on sound reasoning and without any undue influence or favour to anyone. It is an ability of a person to formulate his decision on the basis of facts and without being prejudiced. Preconceived notions, conjectures, suppositions, presumptions and suspicion are different forms of prejudice. There should be no personal belief or intuition or a judgment not founded on proof or certainty.

Prejudice or bias can seriously affect results of investigation. Various elements can affect impartiality of an investigator. Bias can take various forms, e.g. religious bias, racial discrimination, gender, ethnicity, sect, class or caste, all can influence investigation. However, there is a distinction between holding a bias and acting as bias.

10. Role of Logic, Good Observation and Good Judgment

Every crime is unique. There is no universal formula to investigate a case. A good investigation requires proper planning. It is a teamwork that cannot be done in isolation. Composition of team depends on nature of crime. Crime scene is a scene of incident irrespective of the whether a criminal or illegal action has been established.

When arriving at crime scene an officer must determine what offence has been committed and what level of investigation he is required to conduct. It is common that investigating officers do not apply their own reasoning and are only confined to story narrated to them by witness. Even in that case they even do not bother to corroborate their testimony, verify presence of witness at the spot and collect other circumstantial evidence, usually police officers act in mechanical way by recording FIR, statement of witness, drawing rough sketch, making or planting recovery and then submission of challan. If they collect evidence properly from crime scene, it can help prosecution to prove their case. It could also be kept in mind that there is tendency in our country to rope falsely all family members of the accused.

11. Fake Evidence and Witnesses

It is a common trend that in criminal investigation police is bribed and influenced. Fake documents and witnesses are also produced to alter the course of the case. Generally, there are no scientific methods to get confessions. Twisting of facts is not very uncommon. It happens in almost in every case. Facts are twisted by parties in order to either involve innocent or to destroy evidence. In unseen murder case usually witness are planted, in dacoity cases usually identification parade are not held, instead this requirement of law is fulfilled by insertion of supplementary statement that never discloses source of information.

12. Issues in Integrity of Recording of Confession and Declarations

Observations made are not brought on record. Confession are not recorded before Magistrate and police confession forms part of police diary which is neither admissible nor can secure conviction.

Injured victim dying declaration is not recorded, or if recorded no independent person is cited in whose presence such dying declaration is recorded. Similarly, statement of injured witness is recorded without making enquiry from doctor regarding whether such injured is in position to make statement or not.

These are all issues that have impact on integrity of evidence collected and produced during trial. How a court can convict a person when there is no evidence or there is evidence which is tainted.

13. Improper Documentation

The gravest defect of our investigation is improper and inadequate documentation. Court can formulate opinion only on basis of those facts that are relevant and are brought on record. If statement of an important witness is not reduced to writing by a police officer, how court can determine facts that were witnessed by a witness which is not included in the calendar of witnesses by police officer during submission of challan.

Similarly, omission on part of the police officer to mention the description of crime scene, position of body and articles found on crime scene can seriously destroy prosecution case.

Usually police officers do not take into possession crime empties and thus prosecution is deprived of opportunity to prove an important piece of evidence that can establish link between crime, victim and suspect.

14. Chain of Custody

It means documentation of evidence from time to time when it was taken into possession describing time, place or condition, or brief description of item and name of persons/witnesses in whose presence such articles were taken into possession to its production in laboratory/agency or court. It also signifies that there should be no unauthorized handling of evidence.

It is very common that proper chain of custody is not maintained and report of expert, i.e. ballistic expert, chemical examiner, serologist become inconsequential which results not only in damage to prosecution case but also amounts to wastage of time and money consumed in obtaining expert opinion.

15. Delay

Delay which is unnecessary has fatal impact on fate of criminal case. Delay on part of police in sending corpse for post-mortem examination, delay in recording statement of witness, delay in holding identification parade, delay in sending parcels to laboratory for expert opinion are all considered fatal to prosecution case and this delay is caused by negligence of police.

16. Mostly Junior Officers conduct investigation

Mostly the Investigation is conducted by the junior staff such as ASIs or SIs who are not qualified and educated enough to understand the intricacies of investigation.

SUGGESTIONS/REMEDIES/RECOMMENDATIONS/WAY FORWARD

Following measures can be taken to rectify the above defects and issues:

1. Trained, Qualified and Expert Investigators

An investigator should be authorized to investigate the case on basis of his qualification, experience and training. For major offences like murder, rape, forgery/fraud, electronic crimes, kidnapping investigator should have relevant expertise to investigate that crime.

An investigator who have never conducted investigation in forgery should not be allowed to investigate that offence instead of this he should be assigned task according to his expertise and interest and knowledge. Police trainings must be carried out in letter and spirit rather than being conducted as formality.

2. Development of Investigation Protocols

It is very important to develop various protocols in shape of guidelines and instructions or standard procedures that must be followed in investigation of different offences. For example an investigation of a murder case should include more than just formality of injury statement and inquest report and conducting post-mortem. Various steps of investigation must be described and there should be a clear policy statement regarding procedure and proceedings of investigation.

3. Professional Attitude

Police officer should develop professional attitude. Government and our media also play vital role. Both government and media should stop exploitation and should not interfere with process of investigation. Media should be briefed only when investigation has been completed.

4. Increase in Investigation Staff

In Pakistan, there is lack of investigation officers and the same investigation officer conducts investigation of various cases at the same time. There should be increase in investigation staff to make the investigation process more efficient and speedy.

5. Increase in Funds

Increasing the funds for investigation of criminal cases is also a need of the hour. It will make the investigation process competent and independent also. It will also play role in curbing corrupt practices. It will discourage the investigation officers to force the complainants to pay the investigation costs.

6. Depoliticization of Investigation Process

Political parties should not dictate police officers rather they should be allowed to proceed with investigation without being influenced. Illegal practices of holding *panchayats*, formulating opinions of investigation on basis of oath, and deciding cases in police station must be stopped. It is duty of police to collect evidence without compromising its integrity and it is duty of court to determine guilt or innocence on basis of evidence. An investigator is not party to criminal case. He must be impartial.

7. Independence of Investigation Wing

Practically, the same person, Station House Officer (SHO) is in charge of the investigation as well as operational activities at a police station. To make it independent and focused, the investigation wing of the Police can be made independent from operational wing of police.

8. Accountability of Investigator for Corrupt Practices

Investigators who are properly trained and skilled in investigation if destroy evidence or temper it, they must be punished exemplarily to have deterrent effects. However, it must be kept in mind before punishing an investigator that whether he had wilfully caused destruction of evidence or not because parties may often lodge frivolous complaints against police officers and gross negligence are sometimes remains unchecked. There must be clear and logical criteria for punishment.

9. Merit-based Incentives for Investigators

Due to rapid development of technology, investigators must be provided with training and continuous development. Incentive should be given on basis of merits otherwise they shall further deteriorate the existing system.

10. Public Cooperation

During investigation of a criminal case cooperation of the public is of a great importance. Until the people who have witnessed an offence extend cooperation and share cooperation with the investigator it would be difficult for him to reach the culprit.

11. Transport Availability for Investigation Officers

Facilities of frequent transport to reach the crime scene without delay and to conduct further investigation.

12. Use of Technology

The use of modern devices, i.e. computer, audio/video for the preservation of the evidence in criminal investigation. Use of camera and photography of crime scene, etc. is also very important, it may be made common to use.

13. Forensic Laboratories

Availability of forensic science laboratory in every district or at least division. The facility of finger printing should be made available at police station level. DNA has its recognized role in tracing the crime, so it may be introduced at lower level in criminal investigation.

14. Equipping the Staff with Skills to Effectively Utilize the Forensics

Lahore has a fabulous forensics laboratory. This was an important move by the previous PML (N) government because it stressed the imperative of physical evidence for prosecuting criminals and terrorists. But its optimum utilisation requires that police investigators have policing skills, state of the art tools for crime scene investigation and knowledge of what procedures to adopt when reaching a crime scene.

15. SOPs for Crime Scene Investigators

Crime scene investigators comprise a number of investigative specialists. They work as a team at the crime scene, identifying, collecting and processing evidence that is to be analysed by forensic specialists. It is this body of evidence that the prosecution then presents in a criminal court of law.

16. Collecting Crime Scene Forensics

In many police forces in the world, the investigators wear specially made suit while visiting the crime scene. They do it to ensure the crime scene is not contaminated. But such things are not usually done in Pakistan. The suits are there but nobody really cares. That is the problem: nobody cares. Nobody cares because there are no SOPs, no procedural check-lists, no regard for procedures where they exist.

17. Coordination between Investigation Agencies

Coordination between the investigating agencies and sharing information between Police, FIA, NAB, NADRA and ANF is very important.

18. Dedicated Investigation Rooms

The provincial governments can have dedicated investigation rooms in police stations and install cameras there. The IO should record, clearly stating the time and place of investigation, his own name, the name of the suspect, the reason for the investigation. The IOs performance should be monitored by another officer. This record should always be available. If an excess has happened and there's no record of it, that means these procedures were not followed. The negligent must be held accountable.

19. Supervision of Investigation by Senior Officers like DSPs, ASPs or SPs

It will make the investigation process efficient and competent. The senior officer will bring in their expertise which will aid in the investigation process.

CONCLUSION

To conclude, police investigation in Pakistan is not conducted properly due to which our Criminal Justice system has become ineffective. Investigators must be provided specific training to investigate different crimes. Investigation in Pakistan can never yield best results unless investigators develop an impartial professional attitude and investigate case on basis of what facts are actually rather than twisting with facts to produce desired results.

From practical viewpoint, if we make a detailed analysis, one may observe that we ourselves have destroyed the system. Ego, show off and abuse of power, *majboori* (need), and *baradari* system have rotten the whole system from top to bottom and no one is ready to accept his mistake and rectify himself. People enter in service just to secure their career and remains mum during performance of duties to save their service. Those who dare to perform their duties are dealt with iron hands.

QUESTION 15

TECHNIQUES OF INVESTIGATIONS

Q. Define and differentiate interviewing and interrogation techniques. How far human rights of criminals are being violated during the interrogation process? (CSS-2019)

Q. Discuss in detail the "Interviewing and Interrogation Techniques" of investigation. (CSS-2016)

ANSWER

INTRODUCTION

Criminal Investigations can be dynamic, and the way events unfold and evidence is revealed can be unpredictable. Players in a criminal event may be revealed as suspects at different stages of the investigation. ***Interviewing***, ***questioning***, and ***interrogating*** are terms that refer to separate stages in the process of gathering verbal responses from a suspect or a possible suspect. But each stage is different in relation to when and how the information gathering process can and should occur. The differences between these three stages needs to be defined in the mind of the investigator since they will move through a process of first interviewing, then questioning, and finally interrogating a suspect. When this progression occurs, the investigator needs to recognize the changing conditions and take the appropriate actions at the correct junctures to ensure that, if a confession is obtained, it will be admissible at trial.

INTERVIEWING TECHNIQUE OF INVESTIGATION

Investigative interviewing is an essential aspect of the investigative process for patrol officers, detectives or other investigators. As most information comes from people, it is necessary to have knowledge and proficiency in interviewing.

SALIENT FEATURES OF INTERVIEWING TECHNIQUE

1. An interview is a conversation intended to elicit information make interviewing an information-gathering technique.
2. Interviews are generally non-accusatory.
3. During the course of an investigation the investigator will conduct interviews with all available witnesses and potential suspects.
4. The investigator should ask open-ended questions in an attempt to elicit as much information as possible.
5. The interview subject should do most (75%) of the talking during the conversation.
6. If, during the interview it is found that the subject has lied, the investigator should generally not confront the subject. In most cases it is best to challenge a lie during a follow-up interview or once the interviewer has transitioned into an interrogation.
7. The interview method has the goal of "fact-finding" rather than that of obtaining a confession (with an emphasis on the use of open-ended questions), and investigators are expressly prohibited from deceiving suspects.

CRITICAL ANALYSIS OF INTERVIEWING TECHNIQUE

Interviewing a possible suspect is the first stage and the lowest level of interaction. In fact, the person is not even definable as a suspect at this point. Suspects often report criminal events while posing as witnesses or even victims of the crime. The investigator receiving a statement report from such a person may become suspicious that they are not being truthful. There is a unique opportunity at that point to gather the poser's version of events, including any untrue statements that may afford an opportunity to later investigate and demonstrate a possible fabrication, which is by itself a criminal offence. The transition point for an investigator to move from interviewing a witness or victim to detaining and questioning the person as a possible suspect should occur when real evidence is discovered giving the investigator reasonable grounds to suspect that the person is involved in the event. Discovering real evidence and gaining "reasonable grounds to suspect" creates an obligation for the investigator to stop interviewing the person who then becomes a suspect. At this point, the person is a suspect and should be detained for the suspected offence and then the next phase of investigation starts.

Questioning a suspect is the next level of interaction. For a suspect to be questioned, there will be some type of circumstantial evidence that allows the investigator to detain that suspect. The suspect's right to not talk does not preclude the investigator from asking questions, and the investigator should continue to offer the suspect an opportunity to disclose information that may be exculpatory and enable the investigator to eliminate that person as a suspect in the crime being investigated.

INTERROGATION TECHNIQUE OF INVESTIGATION

An interrogation is the process by which suspects are questioned in regards to their involvement in the activity that gave rise to the investigation. The interrogation will involve the interviewer accusing the suspect. Interrogations may be scheduled at the conclusion of the investigation, after all of the evidence has been considered. There are also times when, depending on the suspect's behaviour, an interview will change into an interrogation. This step should not be taken lightly. Once the tone of the conversation has moved to accusatory it is virtually impossible to stop and go back to interviewing.

(a) The objective of interrogation is eliciting confession.

(b) In interrogation, the attitude of interrogation officer becomes accusatorial.

(c) In the interrogation the investigator will do most of the talking.

(d) The questions asked of the suspect will be more direct and less open ended.

THE ACCUSATORIAL METHOD

According to an accusatorial method, police questioning of suspects consist of two phases. In the first phase, the investigator generally conducts a non-accusatorial interview to determine whether the person of interest is indeed the "suspect" and should therefore be formally interrogated [e.g., the "Behavioural Analysis Interview (BAI)]". A major facet of this determination of guilt is a reliance on non-verbal behavioural cues and analyses of linguistic and paralinguistic styles that are believed to indicate deception, but which consistently have been found by scientific methods to be unreliable.

According to an accusatorial approach, it is only following a determination of "guilt" on the part of the investigator that a formal interrogation of the suspect – the second phase – begins. The investigator is then recommended to employ a variety of psychologically manipulative tactics that are designed to elicit compliance from a suspect in the form of a confession to the crime.

COMPONENTS OF INTERROGATION TECHNIQUE

Interrogations generally involve three components:

1. Custody and isolation, in which the suspect is detained in a small room and left to experience the anxiety, insecurity, and uncertainty associated with police interrogation;
2. Confrontation, in which the suspect is presumed guilty and told (sometimes falsely) about the evidence against him/her, is warned of the consequences associated with his/her guilt, and is prevented from denying his/her involvement in the crime; and finally

3. Minimization, in which a now sympathetic interrogator attempts to gain the suspect's trust, offers the suspect face-saving excuses or justifications for the crime, and implies more lenient consequences should the suspect provide a confession.

The strong belief in "guilt" on the part of interrogators has been shown to lead to the use of longer interrogations that involve more psychologically manipulative tactics – ultimately leading to the elicitation of both true and false confessions that confirm the beliefs of the interrogator. The psychological manipulation of consequences in this context, and the associated manipulation of perceived culpability on the part of the suspect, have been shown to directly influence the incidence of false confessions.

CRITICAL ANALYSIS OF INTERROGATION TECHNIQUE IN PAKISTAN'S CONTEXT

In Pakistan's context, torture is widely used by the investigation officers as a method to elicit confessions from the suspect. The human rights of the accused are violated in the process of investigation. Pakistan's investigation system is underdeveloped so far and the investigation officers generally lack the qualification and expertise to use international investigative techniques to elicit confession from the suspects. That is the reason why they succumb to the easiest but the brutal and inhuman route of psychological and physical torture of the suspect in police station or other detention centres.

While sending the accused on physical remand, the judge as well as the investigator know that the accused will be subjected to torture depending on the social, political and financial status of the accused. The weaker the position of the accused, the more he will be tortured during investigation.

Interrogation is the most serious level of questioning a suspect, and interrogation is the process that occurs once reasonable grounds for belief have been established, and after the suspect has been placed under arrest for the offence being investigated. Reasonable grounds for belief to make such an arrest require some form of direct evidence or strong circumstantial evidence that links the suspect to the crime.

PREPARING AN INTERROGATION PLAN

Prior to beginning the actual interrogation, the investigator should prepare an interrogation plan by:

- **(a)** reviewing the suspect's profile, criminal record, and past investigations;
- **(b)** reviewing the full details of the existing investigation to date;
- **(c)** determining the elements of the offence that will need to be proved;
- **(d)** determining if sufficient evidence has already been obtained to submit a *prima facia* case.
- **(e)** examining evidence that demonstrates motive, opportunity, and means;
- **(f)** determining what evidence was located and considered in forming reasonable grounds to arrest the suspect;
- **(g)** what physical evidence has been found that may yet be analyzed to prove the suspect's involvement.

Preparing the interrogation plan can assist the investigator in developing a strategy to convince the suspect to answer questions or confess to the crime. Those uninitiated to the process of interrogation might wonder why anyone would possibly choose to answer questions or confess when they have been provided with right that they are not obliged to say anything, and anything they do say may be used as evidence. There are several reasons that can motivate or persuade a suspect to answer questions or confess. Statements or confessions are often made despite the warnings that would seemingly deter anyone from saying anything. These reasons include:

- wishing to exonerate oneself,
- attempting deception to outsmart the system,
- conscience,
- providing an explanation to minimize one's involvement in the crime, or
- surrender in the face of overwhelming evidence.

INTERNATIONAL PERSPECTIVE ON FALSE CONFESSIONS

The elicitation of false confessions is an international problem that has been documented in almost every country of every continent. Two general factors have been linked to the incidence of false confessions:

1. Personal (psychological) vulnerabilities of the individual.
2. The use of accusatorial (psychologically-based) interrogative methods.

Police interview and interrogation methods in the criminal justice arena are being called into question because of the incidence of false confessions leading to wrongful conviction. While accusatorial methods are commonly used in countries such as the Pakistan, India, United States, Canada, and many Asian nations. Some European countries have, under the influence of the European Convention of Human Rights (ECHR), banned using closed-ended or confirmatory questions and deception (e.g. by presenting false evidence) in the interrogation of suspects.

Countries such as the United Kingdom, Norway, New Zealand, and Australia, have amended their interrogation practices to employ information-gathering methods of interrogation. Systematic research examining these two approaches to interviewing and interrogation has been conducted over the past decade, with studies generally demonstrating that accusatorial methods increase the likelihood of false confession, while information-gathering methods protect the innocent yet preserve interrogators' ability to elicit confessions from guilty persons.

DIFFERENCE BETWEEN INTERVIEWING AND INTERROGATION TECHNIQUES

Generally speaking, information-gathering and accusatorial interrogation methods can be distinguished along five dimensions. Information-gathering methods seek to establish rapport within the interview, and use direct, positive confrontation of the suspect to elicit confessions or other self-incriminating statements. In contrast, accusatorial methods seek to establish control of the suspect and use psychological manipulation to achieve confession. As such, these two methods result in distinct questioning approaches, with information-gathering methods relying upon open-ended, exploratory approaches and accusatorial methods employing closed-ended, confirmatory (yes or no) approaches. Additionally, the two methods differ in their primary intended outcome. Whereas the information-gathering method places a premium on obtaining **information**, the accusatorial approach aims to obtain **confessions**. Finally, the two methods can be contrasted based upon the model of deception detection that they invoke: information-gathering methods yield cognitive cues to deception, while accusatorial methods yield anxiety-based cues to deception.

Information-gathering methods	Accusatorial methods
Establishes rapport	Establishes control
Uses direct, positive confrontation	Uses psychological manipulation
Employs open-ended, exploratory questions	Employs closed-ended, confirmatory questions
Primary goal is elicitation	Primary goal is confession
Focuses on cognitive cues to deception	Focuses on anxiety cues to deception

REID TECHNIQUE

The Reid method is a system of interviewing and interrogation widely used by police departments in many countries of the world. The Reid technique is a method of interrogating suspects that was developed in the 1950s by John E. Reid, an American psychologist, polygraph expert and former Chicago police officer. Supporters argue that the Reid technique, a psychological method, is useful in extracting information from otherwise unwilling suspects. Critics of the technique charge that it can elicit an unacceptably high rate of false confessions from innocent people, especially juveniles.

COMPONENTS OF REID TECHNIQUE

The Reid Technique involves three components – factual analysis, interviewing, and interrogation. Following is a brief summary of these components.

I. Factual Analysis

The Reid website describes factual analysis as an inductive approach where each individual suspect is evaluated with respect to specific observations relating to the crime. Consequently, factual analysis relies not only on crime scene analysis, but also on information learned about each suspect. . . Applying factual analysis . . . results in establishing an estimate of a particular suspect's probable guilt or innocence based on such things as the suspect's bio-social status (gender, race, occupation, marital status, etc.), opportunity and access to commit the crime, their behaviour before and after the crime, their motivations and propensity to commit the crime, and evaluation of physical and circumstantial evidence.

This factual analysis is also intended to "identify characteristics about the suspect and the crime which will be helpful during an interrogation of the suspect believed to be guilty" such as motive or the suspect's personality type.

II. Behaviour Analysis Interview

The Reid website describes the Behaviour Analysis Interview (BAI) as a 'non-accusatory question and answer session', involving both standard investigative questions and "structured 'behaviour provoking' questions to elicit behaviour symptoms of truth or deception from the person being interviewed."

The investigator first asks background questions, to establish personal information about the suspect and allow the investigator to evaluate the suspect's "normal" verbal and non-verbal behaviour. The investigator then asks "behaviour-provoking" questions intended "to elicit different verbal and non-verbal responses from truthful and deceptive suspects." The investigator will also ask some investigative questions during this stage.

III. Interrogation

The Reid Technique says that an interrogation "should only occur when the investigator is reasonably certain of the suspect's involvement in the issue under investigation." There are nine steps to the Reid interrogation technique, briefly described below.

1. **The positive confrontation.** The investigator tells the suspect that the evidence demonstrates the person's guilt. If the person's guilt seems clear to the investigator, the statement should be unequivocal.
2. **Theme development.** The investigator then presents a moral justification for the offence, such as placing the moral blame not on the suspect but on someone else or external

circumstances. The investigator presents the theme in a monologue and in sympathetic manner.

3. **Handling denials.** When the suspect asks for permission to speak at this stage (likely to deny the accusations), the investigator should discourage allowing the suspect to do so. The Reid Technique asserts that innocent suspects are less likely to ask for permission and more likely to "promptly and unequivocally" deny the accusation. The technique states that *"it is very rare for an innocent suspect to move past this denial state."*
4. **Overcoming objections.** When attempts at denial do not succeed, a guilty suspect often makes objections to support a claim of innocence (e.g. I would never do that because I love my job.) The investigator should generally accept these objections as if they were truthful, rather than arguing with the suspect, and use the objections to further develop the theme.
5. **Procurement and retention of suspect's attention.** The investigator must procure the suspect's attention so that the suspect focuses on the investigator's theme rather than on punishment. One way the investigator can do this is to close the physical distance between himself or herself and the suspect. The investigator should also "channel the theme down to the probable alternative components."
6. **Handling the suspect's passive mood.** The investigator "should intensify the theme presentation and concentrate on the central reasons he [or she] is offering as psychological justification . . . [and] continue to display an understanding and sympathetic demeanour in urging the suspect to tell the truth."
7. **Presenting an alternative question.** The investigator should present two choices, assuming the suspect's guilt and developed as a "logical extension from the theme," with one alternative offering a better justification for the crime (e.g., "Did you plan this thing out or did it just happen on the spur of the moment?"). The investigator may follow the question with a supporting statement "which encourages the suspect to choose the more understandable side of the alternative."
8. **Having the suspect orally relate various details of the offence.** After the suspect accepts one side of the alternative (thus admitting guilt), the investigator should immediately respond with a statement of reinforcement acknowledging that admission. The investigator then seeks to obtain a brief oral review of the basic events, before asking more detailed questions.
9. **Converting an oral confession to a written confession.** The investigator must convert the oral confession into a written or recorded confession such as repeating Miranda warnings (right to remain silent), avoiding leading questions, and using the suspect's own language.

At times, false documents or CDs, DVDs or USBs, (with the name of suspect and the word "Evidence" written on them), are placed before the suspect to give him an impression the investigation officer has procured evidence against the suspect. The objective is to get an early confession.

CRITICAL ANALYSIS OF REID TECHNIQUE

Some critics contend that the Reid Technique is premised on certain assumptions about human behaviour that are not supported by empirical evidence, and that the technique may lead to false confessions. The proponents of Reid Technique contend that critics mischaracterize the Reid Technique and that false confessions are caused by interrogators applying inappropriate methods not endorsed by the original Reid Technique.

OTHER RELEVANT TECHNIQUES OF INVESTIGATION

Peace Model and Cognitive Interview

The Peace Model is similar to components of the Cognitive Interview. The Cognitive Interview was derived from basic memory research and involves a series of mnemonic elicitation techniques that have been shown to improve the recall of information from memory. One of the principal techniques is context reinstatement (i.e. attempts to reinstate emotions, perceptions, and sequences of the event to-be-remembered). Another technique is to vary the order in which events are recounted. For example, asking liars and truth-tellers to recall an event in reverse order (which, in theory, should be more difficult for liars than truth-tellers) would improve interviewers' ability to accurately detect deception.

Peace Method

In England, police generally use a less confrontational interview and interrogation method than is used in the United States. The method is called Preparation and Planning, Engage and Explain, Account, Closure and Evaluate (PEACE). Under the PEACE method, investigators allow a suspect to tell his or her story without interruption, before presenting the suspect with any inconsistencies or contradictions between the story and other evidence. Investigators are prohibited from deceiving suspects during an interview

Kinesic Interview

Kinesics is the study of nonverbal communication. The Kinesic Interview method involves analyzing a person's behaviour to assess deception. The method has some similarities to the Reid Technique. One author, Stan B. Walters, describes two phases to this process: the "Practical Kinesic Analysis Phase" and the "Practical Kinesic Interrogation Phase."

During the analysis phase, the interviewer uses several techniques to observe and analyze the subject's behaviour "to determine the subject's truthful and deceptive behaviours or at least to determine those areas most sensitive to the subject and, therefore, in need of further attention through verbal inquiry." The investigator uses information gathered during the first phase to tailor interrogation for the specific subject. Walters describes the interrogator's task of "breaking the cycle of deception" during the interrogation; this includes confronting the suspect's negative-response emotional states.

Walters describes over 30 practical kinesic principles to guide investigators in this process. The "first and most important" such principle is that "No single kinesic behaviour, verbal or nonverbal, proves a person is truthful or deceptive". The other principles include both general statements of human behaviour (people are better able to control verbal than nonverbal kinesic signals).

QUESTION 16

TERRORISM, RADICALISM AND WAR ON TERROR

Q. **Write a critical note on the rule of law enforcement agencies in the control of terrorism in Pakistan. Suggest measures to minimize radicalization in Pakistan. (CSS-2017)**

Q. **Define Terrorism. What are the causes of terrorism and discuss some of the counter-terrorism strategies to control the menace of terrorism.**

ANSWER

INTRODUCTION

After 9/11, the Muslims were unjustifiably '*labelled*' as terrorists across the globe. It is beyond doubt that some Muslims have certainly committed acts of terrorism. But people from other communities like Hindus, Christians and Jews have also committed acts of terrorism. Therefore, no religion and community can be blamed for terrorist acts of some individuals or groups. Despite its long history, it is often difficult to precisely define terrorism (from the Latin *terrere*, which means to frighten) and to separate terrorist acts from interpersonal crimes of violence. For example, if a group robs a bank to obtain funds for its revolutionary struggles, should the act be treated as terrorism or as a common bank robbery? In this instance, defining a crime as terrorism depends on the kind of legal response the act evokes from those in power. To be considered terrorism, which is a political crime, an act must carry with it the intent to disrupt and change the government and must not be merely a common law crime committed for greed or egotism.

DEFINING TERRORISM

Because of its complexity, an all-encompassing definition of terrorism is difficult to formulate, although most experts agree that it generally involves the illegal use of force against innocent people to achieve a political objective. The term international terrorism means terrorism involving citizens or the territory of more than one country. A terrorist group is any group practising, or that has significant subgroups that practise, international terrorism.

Terrorism is defined from the variable viewpoints of law, politics, culture and public opinion, and the sciences.

> *Terrorism involves the use of illegitimate means, typically involving the exercise of violence oriented at civilians, for political-ideological purposes. Terrorism thus has both an instrumental component, referring to its means, and a goal – oriented component, referring to its objectives.*

THE DEFINITION OF TERRORISM ACCEPTED BY THE UNO

> *Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets.*

PERSPECTIVE OF CRIMINOLOGY ON TERRORISM

The field of terrorism studies broadly encompasses both terrorism as a particular activity involving the infliction of harm for specified purposes, and counter – terrorism, involving practices and institutions concerned with defining and responding to terrorism. Criminology incorporates the social-scientific study of crime and deviance as well as the practices and institutions of social control, broadly defined as the definition of and response to crime or deviance.

According to the criminologists:

(a) terrorism is a form of criminal or deviant behaviour

(b) counter-terrorism is part of social control.

(c) a terrorist is not a '*target*' which may be eliminated through military action

(d) for criminologists, a terrorist is a '*suspect*', not a target

(e) criminologists say that terrorist suspects should be given the right of due legal process and fair trial.

(f) According to the criminologists, role of police and civil judiciary, instead of military courts, must be improved and enhanced in dealing with terrorists.

In criminological discourse, the term criminal justice is often used to refer to the formal means of social control, including the institutions of police, courts, and corrections. At the most general level of criminological analysis, then, terrorism and counter-terrorism can be conceived as crime and social control, respectively.

Studying counter terrorism as a form of social control and, more specifically, a component of criminal justice, criminological research can bring out the security dimensions of social control that are not of a military or political character. Much of the contemporary public discourse on terrorism, especially in the popular media, typically focuses on counter terrorism in the world of politics and in relation to war, but criminologists can reveal the manner in which institutions of social control, particularly law enforcement agencies, conceive of and respond to terrorism as a criminal matter. The targets of counter terrorism are thereby treated as suspects, who are given certain rights of due process on the basis of publicly presented evidence in courts, and who, upon a determination of guilt, can receive punishment. Military counter terrorism operations, by contrast, are oriented at enemies, not suspects, who can be apprehended or killed in combat. Captured enemies are detained, to be released when a cessation of hostilities has been declared. The respective logics of criminal justice policy and military counter terrorism actions, then, are very different, although they factually coexist in the wider constellation of counter terrorism today. Bringing out the essentially multidimensional nature of counter terrorism is among criminology's most exciting challenges.

TERRORISM AND WARFARE

Terrorism is different from warfare in that it exists outside, and purposely operates against, the principles of war as they are regulated by the international community of nations. Unlike warfare, terrorist acts are often oriented toward civilian populations or are indiscriminate in their infliction of violence. Whereas war operates on the basis of standards of international law, involving legally recognized methods and actors (soldiers), terrorist activities are conducted by individuals and groups who do not enjoy any legally recognized status.

Terrorism usually involves a type of political crime that emphasizes violence as a mechanism to promote change. Whereas some political criminals sell secrets, spy, and the like, terrorists systematically murder and destroy or threaten such violence to terrorize individuals, groups, communities, or governments into conceding to the terrorists' political demands. Because terrorists lacks large armies and formidable weapons, their use of subterfuge, secrecy, and hit-and-run tactics is designed to give them a psychological advantage and the power to neutralize the physical superiority of their opponents.

TERRORISM FOR PROMOTING OR OPPOSING AN IDEOLOGY

However, it may be erroneous to assume that terrorists have political goals. Some may try to bring about what they consider to be social reform – for example, by attacking women wearing fur coats or sabotaging property during a labour dispute. Terrorism must also be distinguished from conventional warfare, because it requires secrecy and clandestine operations to exert social control over large populations. So terrorist activities may be aimed at promoting an ideology other than political change.

TERRORISM AND GUERRILLA WARFARE

The word terrorist is often used interchangeably with the word guerrilla, but the terms are quite different. Guerrilla comes from the Spanish term meaning "little war". Guerrillas are armed military bands, typically located in rural areas, that attack military, police, and government officials in an effort to destabilize the existing government. Their organizations can grow quite large and eventually take the form of a conventional military force. Some guerrilla bands infiltrate urban areas (urban guerrillas). For the most part, guerrillas are a type of insurgent band.

TERRORIST AND INSURGENCY

As commonly used, an insurgency is somewhat different from both guerilla warfare and terrorism. The typical goal of an insurgency is to confront the existing government for control of all or a portion of its territory, or force political concessions in sharing political power by competing with the opposition government for popular support.

REVOLUTION AND TERRORISM

A revolution (from the Latin *revolutio*, "a revolving," and *revolvere*, "turn, roll back") is generally seen as a civil war fought between nationalists and a sovereign power that holds control of the land, or between the existing government and local groups over issues of ideology and power. Historically, the American Revolution may be considered an example of a struggle between nationalistic groups and an imperialistic overseas government. Classic examples of ideological rebellions are the French Revolution, which pitted the middle class and urban poor against the aristocracy, and the Russian Revolution of 1917, during which the Czarist government was toppled by the Bolsheviks.

The Various Forms of Radical Political Groups

	Terrorist	Guerilla	Insurgent	Revolutionary
Description	Groups who engage in premeditated, politically motivated violence perpetrated against noncombatant targets.	Armed groups operating in rural areas who attack the military, the police, and other government officials.	Groups who engage in armed uprising, or revolt against an established civil or political authority	Engages in civil war against sovereign power that holds control of the land.
Example	Al-Qaeda,	Mao's People's Liberation Army; Ho Chi Minh's Viet Cong	Iraqi insurgent groups	American Revolution, French Revolution, Russian Revolution
Goals	Personal, criminal or political gain or change.	Replace or overthrow existing government.	Win over population by showing government's incompetence. Force government into political concessions and/or power sharing.	Gain independence or oust existing government or monarchy
Methods	Small, clandestine cells who use systematic violence for purpose of intimidation.	Use unconventional warfare and mobile tactics. May grow large and use tactics similar to conventional military force.	May use violent (bombings and kidnappings) or nonviolent means (food distribution centers and creating schools).	Can use violent armed conflict or nonviolent methods such as Gandhi used in India.

More recent ideological revolutions have occurred in China, Cuba, Nicaragua, and Chile, to name but a few. While some revolutions (such as the American, French, and Russian) rely on armed force, terror activities, and violence, others can be non-violent, depending on large urban protests and threats. Such was the case when the Shah Mohammad Reza Pahlavi was toppled in Iran in the 1979 revolution that transformed Iran into an Islamic republic under the rule of Ayatollah Ruhollah

Khomeini. Similar events unfolded in Egypt in early 2011 in the effort to topple the government of Hosni Mubarak that had been in power for 30 years.

Emergence of Terrorism in the Modern Political History

The term terrorist first became popular during the French Revolution. Use of the word terrorism began in 1795 in reference to the Reign of Terror initiated by the revolutionary government during which agents of the Committee of Public Safety and the National Convention were referred to as terrorists. In response, royalists and opponents of the Revolution employed terrorist tactics in resistance to the Revolutionists. The widespread use of the '*guillotine*' or National Razor is an infamous reminder of the revolutionary violence; urban mobs demanded blood, and many government officials and aristocrats were beheaded in gruesome public spectacles. From the fall of the Bastille on July 14, 1789, until July 1794, thousands suspected of counter-revolutionary activity were killed on the guillotine. Here again, the relative nature of political crime is documented: most victims of the French Reign of Terror were revolutionaries who had been denounced by rival factions, whereas thousands of the hated nobility lived in relative tranquillity. The end of the terror was signalled by the death of its prime mover, Maximilien Robespierre, on July 28, 1794, as the result of a successful plot to end his rule. He was executed on the same guillotine to which he had sent almost 20,000 people. In the hundred years following the French Revolution, terrorism continued to be a political tool around the world.

Terrorism in its Modern Types

Historically, terrorism was mostly associated with revolutionary movements involved with seeking to overthrow political regimes. As the establishment of nation-states took on a more permanent hold, nationalist terrorism increased to secure the rights of specific ethnically defined minority groups, such as the Irish in the United Kingdom, the Basques in Spain, and Zionists in the former British Mandate of Palestine. In recent times, religious terrorism has proportionally increased the most, especially on an international level. The most conspicuous examples are ISIS and al-Qaeda, which is held responsible for the attacks on the World Trade Center and the Pentagon on September 11, 2001.

I. **Revolutionary Terrorists:** Revolutionary terrorists use violence to frighten those in power and their supporters in order to replace the existing government with a regime that holds acceptable political or religious views. Terrorist actions such as kidnapping, assassination, and bombing are designed to draw repressive responses from governments trying to defend themselves.

II. **Political Terrorists**: Political terrorism is directed at people or groups who oppose the terrorists political ideology or whom the terrorists define as "outsiders" who must be destroyed. Political terrorists may not want to replace the existing government but to shape it so that it accepts the terrorists' views. Some sub types of political terrorists include

   (a) Right Wing Political Terrorism
   (b) Left Wing Political Terrorism
   (c) Eco-Terrorism

III. **Nationalist Terrorism**: Nationalist terrorism promotes the interests of a minority ethnic or religious group that believes it has been persecuted under majority rule and wishes to carve out its own independent homeland.

IV. **Retributive Terrorism**: Some terrorist groups are not nationalist, political, or revolutionary organizations. They do not wish to set up their own homeland or topple a government but rather want to impose their social and religious code on others.

V. **State-sponsored Terrorism:** State-sponsored terrorism occurs when a repressive government regime forces its citizens into obedience, oppresses minorities, and stifles political dissent. Death squads and the use of government troops to destroy political opposition parties are often associated with political terrorism.

VI. **Cult Terrorism:** Some cults may be classified as cult terror groups because their leaders demand that followers prove their loyalty through violence or intimidation. These destructive cults are willing to have members commit violence, including murder. Members typically follow a charismatic leader who may be viewed as having godlike powers or even being the reincarnation of an important religious figure. The leader and his or her lieutenants commonly enforce loyalty by severe discipline and by physically preventing members from leaving the group.

VII. **Criminal Terrorism:** Sometimes terrorist groups become involved in common-law crimes such as drug dealing and kidnapping, even selling nuclear materials. According to terrorism expert Chris Dishman, these illegal activities may on occasion become so profitable that they replace the group's original focus.

The Variety of Terror Groups

Revolutionary terrorists	Use violence to frighten those in power and their supporters in order to replace the existing government with a regime that holds acceptable political or religious views.
Political terrorists	Political terrorism is directed at people or groups who oppose the terrorists' political ideology or whom the terrorists define as "outsiders" who must be destroyed.
Eco-terrorism	Political terror groups involved in violent actions to protect the environment.
Nationalist terrorism	Groups whose actions promote the interests of a minority ethnic or religious group that has been persecuted under majority rule and/or wishes to carve out its own independent homeland.
Retributive terrorism	Groups that use violence as a method of influence, persuasion, or intimidation in order to achieve a particular aim or objective.
State-sponsored terrorism	Carried out by a repressive government regime in order to force its citizens into obedience, oppress minorities, and stifle political dissent.
Cult terrorism	Cults whose leaders demand that followers prove their loyalty through violence or intimidation.
Criminal terrorism	Terrorist groups that become involved in common-law crimes such as drug dealing and kidnapping, even selling nuclear materials.

TECHNOLOGICAL ADVANCEMENT AND TERRORISM

The invention of dynamite, the favourite tool of the 19th century bomb-throwing anarchist, has been said to signal the beginning of terrorism from a technological point of view. Today, the means employed by terrorist organizations and individuals are more varied than ever, involving both legitimate as well as illegitimate activities and political as well as nonpolitical crimes. In addition to engaging in bombings of civilian populations in hostile lands, modern terrorist groups can branch out into the legitimate world of human affairs by organizing social welfare provisions in friendly territories.

Terrorist activity today, furthermore, can involve routine criminal enterprises, such as drug trafficking and money laundering, in order to facilitate other, more violent activities that are politically motivated. An additional characteristic of contemporary terrorism is the increasingly high degree of technological sophistication that marks terrorist organizations and their methods of operation. Aided by newly developed means of transportation and communication, a relatively high degree of internationalism and cross-border cooperation characterizes many contemporary terrorist groups. The methods of personnel recruitment, training, and intelligence gathering have likewise modernized to high levels of expertise. Advent and widespread usage of social media has changed the way terrorists operate these days.

ORGANIZATIONAL PATTERN OF TERRORISTS

Terror groups tend to be networked or hierarchical. Newer terrorist organizations tend to be formed as networks, loosely organized groups located in different parts of a city, state, or country (or worldwide) that share a common theme or purpose, but have a diverse leadership and command structure and are only in intermittent communication with one another.

When needed, networked groups can pull factions together for larger scale operations, such as an attack on a military headquarters, or conversely, they can readily splinter off into smaller groups to avoid detection when a counterterrorism operation is under way. The advent of the Internet has significantly improved communications among networked terror groups.

As terror organizations evolve and expand, they may eventually develop a hierarchical organization with a commander at the top, captains, local area leaders, and so on. Ideological and religious groups tend to gravitate toward this model since a common creed/dogma controls their operations and a singular leader may be needed to define and disseminate group principles and maintain discipline. In a hierarchical model, the leader has the power to increase or decrease levels of violence for political purposes (i.e. they may order their followers to initiate a bombing campaign to influence an election). Schools may be off limits so that the population is not antagonized, or schools may become a target to show that the government cannot protect their children.

CAUSES OF TERRORISM

Psychological Causes

While not all terrorists suffer from psychological deficits, enough do so that the typical terrorist can be described as an emotionally disturbed individual who acts out his or her psychoses within the confines of violent groups. According to this view, terrorist violence is not so much a political instrument as an end in itself; it is the result of compulsion or psychopathology. Terrorists do what they do because of garden-variety emotional problems, including but not limited to self-destructive urges and disturbed emotions combined with problems with authority.

Critically speaking, the view that terrorists suffer psychological abnormality is quite controversial and some critics suggest that it is spurious; the majority of research on terrorists indicates that most are not psychologically abnormal. Even suicide bombers, a group that should show signs of psychological abnormality, exhibit few signs of the mental problems such as depression that are typically found in people who choose to take their own life.

Socio-economic Alienation and Terrorism

Some experts believe that a lack of economic opportunity and recessionary economies are positively correlated with terrorism. Because they are out of the political and social mainstream, young men and women are motivated to join terror groups. Suffering alienation, they lack the tools to compete in a post-technological society. Many are relatively "ordinary" people who, alienated from modern society, believe that a suicide mission will cleanse them from the corruption of the modern world. According to this view, if terrorists suffer psychological deficiencies it is because they suffer alienation from friends, family, and society. In this sense, terror groups, similar to what happens in urban street gangs, provide a substitute family-like environment, which can nurture a heretofore emotionally underprivileged youth.

Are Terrorists Uneducated and Unqualified?

While alienation and estrangement seem plausible, research shows that terrorist operatives are not poor or lacking in education. Ironically, many terrorists appear to be educated members of the upper class. The acts of the modern terrorist – using the Internet; organizing logistically complex and expensive assaults; writing and disseminating formal critiques, manifestos, and theories – require the training and education of the social elite, not the poor and oppressed.

Religious or Ideological Causes

Another view is that terrorists hold extreme religious and/or ideological beliefs that prompt their behaviour. At first they have heightened perceptions of oppressive conditions, believing they are being victimized by some group or government. Once these potential terrorists recognize that these conditions can be changed by an active governmental reform effort that has not happened, they conclude that they must resort to violence to encourage change. The violence need not be aimed at a specific goal. Terrorists believe that their "self-sacrifice" outweighs the guilt created by harming innocent people. Terrorism, therefore, requires violence without guilt; the cause justifies the violence.

Some terrorists are motivated by extreme religious beliefs, which often coincide with their ideological views. But how can they justify using violence if they are truly religious, since most of the world's religions eschew violence? Terrorists believe that their commitment to God justifies their violent actions.

Political Causes

According to many observers, most of the terrorist activity has political roots and causes. While religion and ideology may be used to motivate people and seek new recruits, but the real objective of the terrorists is the political power. Acts of terrorism are politically oriented, ranging from specific goals formulated in terms of the might of political nation-states to more general aims related to the plight of certain peoples and groups. Thus, terrorism can result from demands made by ethnic groups to receive representation in an existing political community or have its own state be formed.

Controlling Terrorism

Because terrorism is a highly complex phenomenon, a wide range of counter-terrorism strategies have been developed to deal with the causes and consequences of terrorist activity at the national and international level. Counter-terrorist measures involve a wide range of practices and institutions, including governmental bodies, military and intelligence forces, legal institutions, public security agencies, economic organizations, and cultural groups.

DIMENSIONS OF COUNTER-TERRORISM

1. LEGAL DIMENSION OF COUNTER-TERRORISM

(a) Pakistan's Context

Nationally, Pakistan has Anti-Terrorism Act, 1997 which has been amended several times. There has been some confusion and misuse of the definition of terrorism in Pakistan. In 2019, a larger bench of the Supreme Court was constituted under the Chief Justice of Pakistan, Justice Asif Saeed Khosa to settle the ambit of terrorism under the law.

- According to the judgment, the term 'terrorism' can be applied to the use of force, under an organised plan, for the realisation of religious, ideological or political goals.
- It can also be applied when, under the plan, terror is struck in the hearts of people and damage dealt to lives and property.

- The offence of terrorism is also committed when under an organised plan, religious sectarianism is spread in society.
- Attacking journalists, the business community, the public, and the social sector under an organised plan also falls within the definition of terrorism.
- Similarly, an attack on law enforcement agencies and security forces is also terrorism, according to the judgment.
- Employing an organised plan to cause damage to government property and to commit theft and robbery under such a plan are also acts of terrorism.

The judgment also outlined what offences cannot be viewed as terrorism.

- The court clearly distinguished in its judgment that acts of violence, such as setting things on fire and extortion, committed under a personal vendetta arising out of enmity or hostility are not 'terrorism'.
- Personal enmity as a result of contempt for a person's religion is not terrorism.
- A person's involvement in an act of violence owing to hostility or personal enmity against the police, army or government employees does not fall within the scope of terrorism, ruled the court.
- The Supreme Court clarified that "any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act".

"It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labelled or characterised as terrorism if such actions are taken in furtherance of personal enmity or private vendetta," said the court in its judgment.

It also observed that the definition of terrorism at present, as defined in the Act, is "too wide and the same includes so many actions, designs and purposes which have no nexus with the generally recognised concept of what terrorism is."

In its judgment, the Supreme Court gave an overview of the jurisprudence on the definition of terrorism to show two predominant approaches taken by courts in determining the ambit of the law:

- One interpretation considered the "nature" or "effect" of the act, finding that if the "nature of the offence was gruesome, shocking and created panic amongst society", the act would be considered terrorism even if the motive was private. In one case, for example, the Supreme Court held that the killing of five people over a property dispute could be considered terrorism as the killings took place in public and were visible to others living in the neighbourhood.
- Another interpretation considered the purpose, design or motive behind the act to determine if it constituted terrorism, and found that no matter how "heinous" or "gruesome" an offence, it cannot be considered terrorism if the motive behind it is personal vendetta. This approach recognised that the ATA is a "harsh law" that significantly curtails fair trial rights available to accused under regular criminal law. It therefore sought to ensure that the ATA is applied specifically to cases for which it was originally intended.

The larger bench of the Supreme Court agreed with the latter approach, and held that terrorism denotes "commission of a crime with the design or purpose of destabilising the government, disturbing the society or hurting a section of the society…." Significantly, the court held creating fear or insecurity in society would in itself not be terrorism "unless the motive itself is to create fear or insecurity in the society" — where fear or insecurity is just a by product, a fallout or an unintended consequence of a private crime, it would not be considered terrorism.

While the Supreme Court's judgment is an important first step towards limiting the misuse of the ATA, a number of challenges still remain.

First, as the court also pointed out in its judgment, the definition of terrorism in the ATA is unnecessarily wide and convoluted. This is because of a series of ill-conceived amendments to the law that have confused and conflated the act, the intention and the motive that constitute terrorism, making the provision ripe for arbitrary and overbroad application.

The ATA also provides that certain offences contained in the Third Schedule of the law can exclusively be tried by anti-terrorism courts and, among others, include kidnapping and abduction for ransom. These offences do not have to be committed for any specific purpose to be tried under the jurisdiction of ATCs. A large number of offences tried by ATCs relate to kidnapping and abduction, even where these crimes are motivated by reasons unrelated to terror.

It is, therefore, necessary that parliament reviews that definition of terrorism and the scope of the ATA in line with the Supreme Court judgment as well as the concluding observations of the UN Human Rights Committee (2017). In its concluding observations, the Human Rights Committee expressed concern at the "very broad definition of terrorism provided for in the Anti-Terrorism Act" as well as the "absence of procedural safeguards in court proceedings", and recommended Pakistan should review the ATA with a view to aligning the definition of terrorism in accordance with international standards.

Second, all institutions of the state must ensure that the narrow definition of terrorism set out by the Supreme Court is enforced by relevant actors in every tier of the criminal justice system. This includes the police and the prosecution, who include terrorism charges in cases to benefit from the harsh provisions of the ATA or to appease the complainants, as well as courts, that have at times expanded the scope of the ATA to cater to populist sentiment.

(b) International Context

Internationally, terrorism has been on the international agenda since 1934, when the League of Nations, predecessor of the United Nations, began the elaboration of a convention for the prevention and punishment of terrorism. Although the Convention was eventually adopted in 1937, it never came into force.

Terrorism has been legally outlawed in all countries. Today, there are more than 15 counter-terrorism international conventions in force. They were developed under the auspices of the United Nations and its specialized agencies and the International Atomic Energy Agency (IAEA). Moreover, on 8 September 2006, the UN General Assembly adopted a "Global Counter-Terrorism Strategy". Moreover, the Comprehensive Convention on International Terrorism is a proposed treaty which intends to criminalize all forms of international terrorism and deny terrorists, their financiers and supporters access to funds, arms, and safe havens. At the South Asian region level, there is 'SAARC Regional Convention on Suppression of Terrorism'.

International agreements against terrorism are often difficult to enforce, however, because of the differences that exist among the legal systems of the world's nations and the different conceptions that exist regarding terrorism and counter-terrorism.

2. POLITICAL DIMENSION OF COUNTER-TERRORISM

Politically, counter-terrorism involves various measures taken by the governments of nation-states as well as by international governing bodies in which nation-states are represented. International agreements against terrorism have been complemented by similar legislative efforts at the level of individual nation-states. Especially in nations where terrorism has been a long standing concern, such policies have been developed for a long time.

(a) Pakistan's Context

There is a political consensus for countering terrorism in Pakistan. There has been several parliamentary resolution and All Parties Conferences (APCs) on the subject of countering terrorism. After the APS attack in 2014, Pakistan's political parties agreed on a ***National Action Plan*** to counter terrorism in all its forms.

(b) International Context

Internationally, there has been a US-led political campaign for generating consensus for countering terrorism at the political level. There have been several UN-brokered meetings and conferences to combat terrorism with practical measures.

3. ECONOMIC DIMENSION OF COUNTER-TERRORISM

(a) Pakistan's Context

According the National Action Plan, the Government of Pakistan is supposed to take measures against the economic support and financing of terrorism. The Government of Pakistan has taken various steps to curb financing of terrorism in Pakistan.

(b) International Context

The Financial Action Task Force (FATF) and groups like Asia Pacific Groups (APG) are working at international level to curb financial of terrorism. At international level, there is 1999 International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention).

4. INSTITUTIONAL DIMENSION OF COUNTER-TERRORISM

(a) Pakistan's Context

At the institutional level, Pakistan has taken multiple steps to counter the menace of terrorism. Some of them include

(a) National Counter Terrorism Authority (NACTA)
(b) Counter Terrorism Wing of Federal Investigation Agency (FIA)
(c) Provincial Counter Terrorism Departments (CTDs) and Counter Terrorism Force (CTF)
(d) Anti-Terrorism Courts
(e) Military Courts

(b) International Context

NATO has been used by the United States to conduct counter-terrorism operations. In the United States, a comprehensive USA Patriot Act (the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act) was passed to intensify surveillance against terrorist activity, create the Department of Homeland Security, and institute exceptional measures to detain and try terrorist suspects in military tribunals that lack many of the due process protections afforded in criminal courts.

5. MILITARY DIMENSION OF COUNTER-TERRORISM

(a) Pakistan's Context

Pakistan has used military operations as a last resort to root out terrorists havens from the country.

- Operation Rah-i-Raast
- Operation Rah-i-Nijaat
- Operation Khyber
- Zarb-i-Azb Operation
- Operation Radd-ul-Fasaad: an intelligence-based operation still going on.

(b) International Context

At the international level, the US has conducted the war in Afghanistan in the pretext of terrorism. The narrative of counter-terrorism was also used while invading Iraq in 2003. But using force a preferred option in Iraq as well as Afghanistan has backfired and both operations turned out to be catastrophic and furthered increased terrorism.

6. COUNTERING CYBER TERRORISM

Cyber Terrorism is increasing at national as well international level. Pakistan's National Response Center for Cyber Crime (NR^3C) deals with cyber-terrorism in Pakistan.

7. IDEOLOGICAL/SOCIAL

There has been least focus on ideological and social dimension of counter terrorism at national as well international level. There is need of framing an effective counter-narrative against terrorism. The role of government and then of religious scholars is of utmost importance to ban and discourage using violence as a means to enforce creed and also discourage violence as a justification for social injustice.

COUNTER-TERRORISM AS SOCIAL CONTROL

Although criminology has traditionally focused the most attention on crime and criminality, contemporary criminological perspectives have been broadened to also study the definition of and responses to crime or deviance under the heading of social control. It is from this perspective that counter-terrorism can be criminologically analyzed to focus on the mechanisms and institutions that are involved in treating terrorism as a function of crime and deviance. Counter-terrorism has generally received less scholarly attention than has terrorism.

Criminologists know much more about criminals and crime than they do about policing and police. Most terrorism studies that have focused on counter-terrorism have examined formal government policies and accompanying pieces of legislation on terrorism that have been enacted at the national and international levels of multiple governing bodies.

A dimension that has been of growing concern, especially among criminologists, is the role played by criminal justice agencies and police institutions in counter-terrorism practices. Because security and police organizations are inevitably targeted at the criminal components of terrorist incidents, their activities in terrorism-related activities are ideally suited for criminological analysis.

Whether social control is conceived in response to terrorism as a crime or as a component in the criminalization of terrorism as deviance, the role of police in counter-terrorism has undeniably been of growing importance.

CONCLUSION

In conclusion, terrorism and counter-terrorism have historically evolved in various forms. Terrorism has increasingly diversified in terms of the objectives that are pursued, and counter-terrorism efforts have likewise proliferated across a range of institutions. Criminologists have contributed to the study of terrorism and terrorism-related phenomena by focusing on terrorism as crime or deviance and counterterrorism as social control.

QUESTION 17

GENDER AND CRIME

Q. Gender and Crime. (Short Note CSS-2017)

Q. Elaborate importance of legal and ethical guidelines for the criminal investigation of gender-based crimes. Support your answer with examples from Pakistani society. (CSS-2017)

Q. Discuss the Gender Distribution of Crime in Pakistan. Also suggest remedial measures to reduce gender-based crimes against women in Pakistan.

ANSWER

INTRODUCTION

Gender is one of the best predictors of crime, especially violent crime. Males are responsible for a disproportionate amount of reported crime. Violent crime has historically and consistently remained a largely male phenomenon. In Pakistan, females are very often victims of various types of crimes ranging from honour crimes, domestic violence, rape, acid throwing, sexual harassment and cybercrimes among some other types. There are issues in criminal justice system of Pakistan regarding investigation and prosecution of gender-based crimes where females are victims. On the other hand, female arrests have also increased significantly for property crimes, especially theft and fraud, as well as for drug offences. Both of these changes in female criminality are likely a result not only of some increased offending but also of increased attention to these behaviours by law enforcement and crime control agencies.

GENDER DISTRIBUTION OF CRIME

National and international data show that:

- Crimes are highly concentrated among men.
- There is an imbalance in the ratio of men to women in prison.
- There are contrasts between the types of crimes men and women commit. (Women are rarely involved in violence. Petty thefts, prostitutions are typical female offences.)

In reality gender differences in crime rates may be less pronounced. Reasons may be:

1. Certain crimes perpetrated by women go unreported. Domestic roles provide them the opportunity to commit crimes at home and in private sphere and these go unreported.
2. Women are regarded as naturally deceitful and highly skilled at covering up their crimes. Supposedly grounded in their biology that they can hide their pain and discomfort.

   The myth of leniency toward women shown by criminal justice system is also questioned because women are treated more harshly than men in cases where they allegedly deviated from the norms of female sexuality. They may be considered as 'doubly deviant', i.e. broken the law plus flouted appropriate female behaviour. For sexually promiscuous girls are more often taken into custody than boys.
3. Here one could refer to double standards where male aggression and violence is seen as natural phenomenon, explanations for female offences are sought in psychological imbalance.
4. Female lawbreakers often escape because they are able to persuade the police and other authorities. They try to get special treatment under "gender contract' – an implicit contract between men and women whereby (1) to be a woman is to be erratic and impulsive, and (2) women need protection by men.
5. Women victims don't report crime due to the humiliating process of medical examination, police interrogations and courtroom cross-examinations.
6. Some studies have shown some correlation between an increase in female criminality and the movement for women's liberation.

CRIMES COMMITTED BY WOMEN

Women are generally involved in the following crimes:

- Petty theft or shoplifting at retailer shops like cosmetics, garments, and jewellery.
- Prostitution and other sex-related crimes.
- Domestic violence committed by females against their in laws and against maids.
- Child kidnapping.
- Money laundering and other white-collar crimes.

Females have lower arrest rates than males for virtually all crime categories except prostitution. Aside from prostitution, female representation has been greatest for minor property crimes such as larceny-theft, fraud, forgery, and embezzlement. The thefts and frauds committed by women typically involve shoplifting, "bad checks" and welfare and credit fraud.

From a variety of sources, it is clear that females are less involved in serious offence categories, and they commit less harm. Women's acts of violence, compared to those of men, result in fewer injuries and less serious injuries. Their property crimes usually involve less monetary loss or less property damage. Females are also less likely than males to become repeat offenders.

Causes of Female Criminality? Why do Women Commit Crime?

The women who most often become involved in crime and end up in the criminal justice system tend to be poor and economically marginalized and have a lack of educational and/or vocational opportunities. In his Strain Theory, Merton stated that *"women are prone to commit crime when they are failed to attain culturally defined goals through institutional mean."* Women's economic status, coupled with their more extensive histories of abuse, make it understandable that the crimes they tend to commit more often, or in which they are otherwise over-represented, are ones that could be considered "survival crimes." For example, property crimes such as larceny or theft; fraud forgery; and sex crimes, such as prostitution, are viable methods of survival for women on the economic margins. These factors shape the nature and extent of crime for women as compared with men.

Poverty is one of the main causes of all crimes which has become social evil for the whole world, especially for the under developed countries. In Pakistani society, poverty pushes the individual to adopt those means that are not only detrimental for their lives but also for the whole community. Influences which are related to female delinquency include poor economic background, lack of education or training and inferior mentality. Sometimes environment shape their attitude as rebellion. Poverty influences the vulnerable fraction of the society to commit crime for unfulfilled basic needs, hopelessness, low living standard and inequality of resources.

In Pakistan, female literacy ratio is very low as compared to male. Since illiteracy has roots in poverty, most of the women in prison are either illiterate or belong to poor families. Patriarchal power relations shape gender differences in crime, pushing women into crime through victimization, role entrapment, economic marginality and survival needs. Due to patriarchal structure Pakistani women are less empowered in terms of mobility and they are highly dependent on their males. The lower class women don't have access to conventional means that lead to achieve their goals. Therefore, women commit crime for betterment of their lives and the lives of their families but later on imprisonment put harsh and detrimental effects on prisoners and their family.

There have been extensive investigations by sociologists, criminologists, and psychologists of the differences in criminal behaviour between men and women. The early literature on this subject, starting with Lombroso and Sigmund Freud, claimed that female criminals were anomalies, and that they showed biological and psychological traits that were very similar to those of male criminals.

Later, they stressed upon the importance of socio-cultural factors and emphasized that the role of gender in the crime market mirrors the role of gender in wider society. They argued that if the gender gap in crime was the result of biological differences between men and women it would not change over time or space, which it clearly does.

LACK OF SCHOLARSHIP ON FEMALE CRIMES AND CRIMINALITY

Criminology has historically been a field dominated by male scholars seeking to explain the criminality of other men. The subject of gender and crime is complex, multifaceted, and certainly worthy of serious scholarly attention. The study of the nature and extent of crime has largely been the study of the nature and extent of male crime. The results of largely male-based studies have been used to craft programmes, interventions, and punishments that would be applied to all offenders. These male-based interventions have historically been merely used to respond to girls' and women's crime on the basis of the assumption that a one-size-fits-all model of crime, punishment, theory, and intervention works for both genders. Researchers in the 20th and 21st centuries, though, have challenged the notion that female offenders are the same as male offenders, that the two commit crimes for the same reasons and should be treated in exactly the same manner by the criminal justice system.

Girls and women who committed crimes were for too long the forgotten offenders. Indeed, the term the invisible offender is often used by feminist scholars to describe the lack of scholarship on and knowledge of female offenders. Women were either eliminated from samples or data on them were excluded from analyses seeking to explain crime or understand the effectiveness of the criminal justice system. The result of this andocentric focus is that theories of crime and justice were really theories of male crime and justice. The specific focus on female offenders began in the 1970s largely because of the work of feminist scholars. Indeed, the number of scholars labelled feminist criminologists has continuously increased during this time span and has resulted in a widening of the research agenda for scholars exploring the topic of gender and crime. Prior to this era, research on girls or women and crime tended to be haunted by stereotypes about "evil" and "bad" women, and the work focused almost exclusively on prostitution. Feminist scholars, by contrast, began to explore whether girls and women committed crime for different reasons than boys and men; they also focused on a wider range of offences.

CRIMES COMMITTED AGAINST WOMEN

Feminist scholars have noted that it is more than a coincidence that much of the violence perpetrated against women has been done at the hands of males, often known to the victim. Violence against women can fit into several broad categories. Some of the forms of violence perpetrated by individuals are: rape, domestic violence, sexual harassment, acid throwing, reproductive coercion, female infanticide, prenatal sex selection, obstetric violence, and mob violence; as well as harmful customary or traditional practices such as honour killings, dowry violence, female genital mutilation, marriage by abduction and forced marriage. Many forms of violence against, such as trafficking in women and forced prostitution are often perpetrated by organized criminal networks.

- **Rape**: Women are most often the victims of rape, which is usually perpetrated by men known to them. The rate of reporting, prosecution and convictions for rape varies considerably in different jurisdictions, and reflects to some extent the society's attitudes to such crimes. Violence or intimidation of the victim may be perpetrated by the rapist or by friends and relatives of the rapist, as a way of preventing the victims from reporting the rape, of punishing them for reporting it, or of forcing them to withdraw the complaint; or it may be perpetrated by the relatives of the victim as a punishment for "bringing shame" to the family.

- **Marital Rape**: Marital rape is also widely considered an unacceptable violence against women now and repudiated by international conventions and increasingly criminalized. The criminalization of spousal rape is recent, having occurred during the past few decades.
- **Domestic Violence**: Women are more likely to be victimized by someone that they are intimate with, commonly called "intimate partner violence". Women are much more likely than men to be murdered by an intimate partner. According to the WHO, globally, as many as 38% of murders of women are committed by an intimate partner.
- **Spousal Abuse**: It is mostly committed by husband against wife. Factors that Predict Spousal Abuse include:
    - Presence of alcohol. Excessive alcohol use may turn otherwise docile husbands into wife abusers.
    - Access to weapons. A perpetrator's access to a gun and previous threat with a weapon may lead to abuse.
    - Step-child in the home. Having a step-child living in the home may provoke abuse because the parent may have a more limited bond to the child.
    - Estrangement. This may occur especially in the case of a controlling partner and subsequent involvement with another partner.
    - Hostility toward dependency. Some husbands who appear docile and passive may resent their dependence on their wives and react with rage and violence; this reaction has been linked to sexual inadequacy.
    - Excessive brooding. Obsession with a wife's behaviour, however trivial, can result in violent assaults.
    - Social learning. Some males believe society approves of spouse or mate abuse and use these beliefs to justify their violent behaviour. Peer support helps shape their attitudes and behaviours.
    - Socio-economic factors. Men who fail as providers and are under economic stress may take their frustrations out on their wives.
    - Flashes of anger. Research shows that a significant amount of family violence results from a sudden burst of anger after a verbal dispute.
    - Having been battered children. Husbands who assault their wives were generally battered as children.
    - Unpredictability. Batterers are unpredictable, unable to be influenced by their wives, and impossible to prevent from battering once an argument has begun.

Honour killings: Honour killings are perpetrated by male family members against women in the family who are believed to have placed dishonour to the family. Women are killed for reasons such as refusing to enter an arranged marriage, being in a relationship that is disapproved by their relatives, attempting to leave a marriage, becoming the victim of rape, dressing in ways that are deemed inappropriate. Honour killings are common in countries such as Afghanistan, Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Pakistan, Saudi Arabia, Syria, India, Turkey, and Yemen.

There were 244 cases of Honour killings of females reported in Punjab only in 2018.

- **Dowry violence**: The custom of dowry is the trigger of many forms of violence against women. Bride burning is a form of violence against women in which a bride is killed at home by her husband or husband's family due to his dissatisfaction over the dowry provided by her family. Dowry violence is common in India, Pakistan, Bangladesh and Nepal.

- **Forced marriage**: Forced marriages are common in South Asia, the Middle East and Africa. The customs of bride price and dowry, contribute to this practice. A forced marriage is also often the result of a dispute between families, where the dispute is 'resolved' by giving a female from one family to the other.
- **Acid throwing**: Acid throwing is defined as the act of throwing acid onto the body of a person "with the intention of injuring or disfiguring them out of jealousy or revenge." The long term consequences of these attacks include blindness and permanent scarring of the face and body. Women and girls are the victims in 75-80% of cases. Acid attacks are often connected to domestic disputes, including dowry disputes, and refusal of a proposition for marriage, or of sexual advances. Such attacks are common in South Asia, in countries such as Bangladesh, Pakistan, and India; and in Southeast Asia, especially in Cambodia.
- **Sexual harassment**: Sexual harassment is abusive, uninvited and unwelcome behaviour of a sexual nature, typically in the work/studying place, which may include intimidation, bullying or coercion of a sexual nature, or the inappropriate promise of rewards in exchange for sexual favours. It can be verbal or physical, and it is often perpetrated by a person in a position of authority against a subordinate.
- **Human trafficking and forced prostitution**: Human trafficking refers to the acquisition of persons by improper means such as force, fraud or deception, with the aim of exploiting them. Forced prostitution is prostitution that takes place as a result of coercion by a third party.
- **Female genital mutilation**: FGM is defined by the World Health Organization as "all procedures that involve partial or total removal of the external female genitalia for non-medical reasons". According to a 2013 UNICEF report, 125 million women and girls in Africa and the Middle East have experienced FGM. According to some local practitioners, it is believed that FGM is linked to cultural rites and customs.
- **Violence against trans-women**: Trans-women commonly experience intimate partner violence. Trans-women also often face abuse by police, and transgender sex workers often face violence from clients. Trans survivors of violence can have a harder time finding domestic violence shelters, as some shelters only accept cisgender women. In 2018, more than two dozen transgender people were violently killed in the United States, most of them women of colour.
- **Cyberbullying**: Cyberbullying is a form of intimidation using electronic forms of contact. In the 21st century, cyberbullying has become increasingly common, especially among teenagers in Western countries. Misogynistic rhetoric is prevalent online, and the public debate over gender-based attacks has increased significantly, leading to calls for policy interventions and better responses by social networks like Facebook and Twitter.

It matters that women are often abused by men they know. First, women who are exposed to abuse from those who are supposed to care for them have greater difficulty forming healthy relationships. Second, when the victim of physical abuse or a sexual assault knows the assailant or is socially close to the assailant, the likelihood of prosecution decreases. In other words, the closer the social relationship, the less likely it is that the assailant will face any punishment. This perpetuates a societal structure and sends a message to men that women are "safe" targets for victimization.

GENDER-BASED CYBERCRIME

A report revealed that FIA Lahore received more than 5,500 complaints of cybercrimes in 2018, involving hacking, identity theft, cyber-bullying, cyber-stalking, financial fraud, digital piracy, intellectual property rights violations, electronic terrorism and extortion. Most of harassment cases are reported where females are victims. FIA had established National Response Centres for Cyber Crime (NR3C), aimed at empowering women so that they could raise their voices against online harassment comfortably. However, the National Response Centres were established only in Karachi, Islamabad, Lahore, Peshawar, Rawalpindi and Quetta, depriving women in other areas the opportunity to report online harassment. The process of filing online complaints is slow as 30 to 60 days are usually required to process a complaint because of which many women avoid reporting their issues.

CAUSES OF CRIMES AGAINST WOMEN

Regardless of the specific situation, women are often held in positions that are deemed secondary to men and that contain less power. This leaves girls and women vulnerable to violence in various forms. Men commit violence against women that serves to humiliate, dominate, and oppress as part of a patriarchal system that values men over women in most situations. When women do commit violence against men, it is often done in self-defence after a long period in a violent situation.

There is no single feminist approach; instead, feminist criminology, as a part of feminist theory, has been informed by a variety of feminist perspectives.

1. **Liberal Feminism on Crimes against Women:** Some scholars have approached the study of girls, women, and crime from the liberal feminist perspective. This perspective views the inequality, as well as other social problems, faced by women as a direct result of a society that views women as unequal to men. Liberal feminists say that laws mandating equal treatment on the basis of sex are the solution. Advocates of the liberal view use education, integration, and litigation to address gender inequality.
2. **Radical Feminism on Crimes against Women:** Radical feminists see an existing social system, especially one rooted in patriarchy (institutional arrangements that enforce male privilege), as crucial to understanding women's status (and women's crime). Scholars adopting this perspective have been responsible for informing the nature and extent of female victimization (in particular, wife battery and sexual assault) at the hands of males, often in intimate and power-imbalanced relationships.
3. **Marxist Feminism:** This perspective focuses on the crimes of the powerful, which are often not prosecuted, while the crimes of the powerless are hyped and heavily policed. In line with this view, Marxist feminists observe capitalism as the most important social structure, one that places women at a societal disadvantage over men because they are even more economically marginalized than their male counterparts.
4. **Socialist Feminists:** Socialist feminists point out that two of the most important social structural conditions, capitalism and patriarchy, place women at disadvantage. Socialist feminists see the disadvantages faced by women as a direct result of this placement. From this perspective, society would need to be completely restructured away from both capitalism and patriarchy to alleviate both gender and class inequities.
5. **Third-Wave Feminists:** Third-wave feminists focus on how gender, race, and class intersect to put some women at greater disadvantage than others.

EXPLAINING GENDER DIFFERENCES IN THE CRIME RATE

Masculinity Hypothesis

Early criminologists pointed to emotional, physical, and psychological differences between males and females to explain the differences in crime rates. Cesare Lombroso's 1895 book, *The Female Offender*, argued that a small group of female criminals lacked "typical" female traits of "piety, maternity, undeveloped intelligence, and weakness." In physical appearance as well as in their emotional make-up, delinquent females appeared closer to men than to other women. Lombroso's theory became known as the masculinity hypothesis; in essence, a few "masculine" females were responsible for the handful of crimes women commit.

Chivalry Hypothesis

Another early view of female crime focused on the supposed dynamics of sexual relationships. Female criminals were viewed as either sexually controlling or sexually naive, either manipulating men for profit or being manipulated by them. The female's criminality was often masked because criminal justice authorities were reluctant to take action against a woman. This perspective is known as the chivalry hypothesis, which holds that much female criminality is hidden because of the culture's generally protective and benevolent attitude toward women. In other words, police are less likely to arrest, juries are less likely to convict, and judges are less likely to incarcerate female offenders.

Although these early writings are no longer taken seriously, some criminologists still believe that gender-based traits are a key determinant of crime rate differences. Among the suspected differences include physical strength and hormonal influences. According to this view, male sex hormones (androgens) account for more aggressive male behaviour, and gender-related hormonal differences explain the gender gap in the crime rate.

Self-incriminating Behaviour of Females

Verbally proficient, many females may develop social skills that help them deal with conflict without resorting to violence. Females are taught to be less aggressive and to view belligerence as a lack of self-control – a conclusion that is unlikely to be reached by a male. Girls are usually taught – directly or indirectly – to respond to provocation by feeling anxious and depressed, whereas boys are encouraged to retaliate. Overall, when they are provoked, females are much more likely to feel distressed than males – experiencing sadness, anxiety, and uneasiness. Although females may get angry as often as males, many have been taught to blame themselves for harboring such negative feelings. Females are therefore much more likely than males to respond to anger with feelings of depression, anxiety, fear, and shame. Although females are socialized to fear that their anger will harm valued relationships, males react with "moral outrage," looking to blame others for their discomfort.

Cognitive Differences

Psychologists note significant cognitive differences between boys and girls that may impact on their antisocial behaviours. Girls have been found to be superior to boys in verbal ability, while boys test higher in visual spatial performance. Girls acquire language faster, learning to speak earlier and faster with better pronunciation. Girls are far less likely to have reading problems than boys, while boys do much better on standardized math tests. (This difference is attributed by some experts to boys receiving more attention from math teachers.) In most cases these cognitive differences are small, narrowing, and usually attributed to cultural expectations. When given training, girls demonstrate an ability to increase their visual-spatial skills to the point where their abilities become indistinguishable from the ability of boys.

Cognitive differences may contribute to behavioural variations. Even at an early age, girls are found to be more empathic than boys – that is, more capable of understanding and relating to the feelings of others. Empathy for others may help shield girls from antisocial acts because they are more likely to understand a victim's suffering. Girls are more concerned with relationship and feeling issues, and they are less interested than boys are in competing for material success. Boys who are not tough and aggressive are labelled sissies and cry babies. In contrast, girls are given different messages; they are expected to form closer bonds with their friends and share feelings. Their superior verbal skills may allow girls to talk rather than fight. When faced with conflict, women might be more likely to attempt to negotiate, rather than to either respond passively or to physically resist, especially when they perceive increased threat of harm or death.

Treatment of Women in Pakistan's Criminal Justice

Women are underprivileged in Pakistan's Criminal Justice System. The Law of Evidence, for instance, does not give the same weight to the testimony of a female witness of crime as it does to a male witness. The law has been amended by virtue of the Protection of Women (Criminal Laws Amendment) Act, 2006. However, this Act has separated rape and fornication, returning the former to the Pakistan Penal Code, 1860. Though DNA evidence has recently been utilized in Pakistan in rape cases such as Zainab rape and murder case and, yet on May 30, 2013, the Council of Islamic Ideology held that DNA is not admissible evidence in rape cases, thus shifting the onus back on the testimony of four male witnesses. This has severely jeopardized female rape victims, who find it impossible to prove false the allegation of fornication, or *zina*. Instead, the rapists get the benefit and are allowed to go scot-free.

Imprisonment has different impacts on women as compared to men. In prison, women experience problems with accommodation, inappropriate staffing, lack of family contact, lack of education and lack of proper health care. High proportion of women prisoners were with a history of mental, physical or sexual abuse. Inadequate health-care services and lack of safety from abuse can worsen these problems. The effect of imprisonment on the physical health of women is often a direct result of the poor conditions of jail including overcrowded environment, poor sanitary facilities, lack of physical and mental activities and lack of appropriate health care. One of the primary barriers to addressing various health problems is the inability to access health care services upon their re-entry into society, either through denial of access or inability to afford health-care insurance. In Pakistani jails, there are rare educational and vocational programmes for technical training of women to keep them mentally busy. Those that are available are less varied and of poorer quality. Women in prison are affected by imprisonment in a particularly harsh way. The human rights and basic dignity of women in prison are systematically violated.

The country's criminal justice system has failed to deter perpetrators of honour killings, domestic violence, forced marriages, rape and family feuds. Pakistan's judiciary at the lower levels and sometimes even at the higher levels, tends to reinforce discriminatory customary norms, rather than securing constitutionally-guaranteed gender equality.

The justice system in Pakistan is predisposed to the notion that women victims of rape have a morally casual attitude. Regardless of what the law says, at the end of the day, the law is interpreted by societal norms, which can result in the miscarriage of justice.

In addition to the formal justice system, the parallel informal system of community arbitration, *panchayat* or *jirga* also perpetuates injustice against women. Women are further victimized through

: contradictions of these parallel legal systems within the same society. A prime example is the case Mukhtaran Mai, who was gang-raped in her village in June 2002 on the orders of a tribal *nchayat*.

There have been instances when the lower judiciary especially has interpreted the law rough the lens of social, cultural and sexual bias. It has assumed, for instance, that women are capable of deciding for themselves and need a guardian to validate their marriage. This has sulted in many women imprisoned in cases of adultery, instituted by relatives not approving of er right to marry at will and invalidating her lawful marriage. In cases of honour killings, itigating factors are often taken into account for men but not for women, because men are ssumed to be guardians of 'family honour'.

In cases of domestic violence, women are forced to reconcile with the perpetrators of violence, ften the husband. Even if the matter reaches the court, the general attitude is that they should always e reconciled, leaving the victims without legal protection and at the mercy of their violent relatives nd abusive partners.

Gender and Juvenile Justice System

Section 17 of the Juvenile Justice System Act provides safeguards for female juveniles. The Act states that no female juvenile shall in any circumstance be apprehended or investigated by a male officer or released on probation under the supervision of a male officer. A female juvenile shall only be kept in a juvenile rehabilitation centre established or certified exclusively for female inmates.

However, implementation of the said law seems like a pipe dream. Juvenile offenders are maltreated and sexually abused in prisons, because of no proper monitoring of juvenile cells and not establishing separate jails for juveniles. Not a single observation home and juvenile rehabilitation centre has been established or certified so far.

Women Representation in Criminal Justice System of Pakistan

Women are under-represented in Pakistan's Criminal Justice System. For instance, women make up less than 2% of country's police force. Although the country's legislatures have in recent years adopted several laws that aim to protect women's rights, the percentage of women in police remains below 2%.

According to National Police Bureau (NPB), there are a total of around 4 lakh police personnel across the country, of which only around 6,000 are women. The data shows that at 3.4%, Gilgit-Baltistan boasts the highest percentage of policewomen when compared to the other regions and provinces. In one of the provinces the percentage of women in the police force is as low as 0.48pc.

Percentage of female police officers in police force of Pakistan. Pakistan has less than 2% women police personnel in total police force of the country.

- Balochistan: 0.48%
- Punjab: 1.8%
- Sindh: 1.5%
- Khyber Pakhtunkhwa: 1%
- Azad Kashmir: 1.6%

Causes of Low Percentage of Females in Police

- **(a)** The officials admitted that apart from cultural norms and traditions, a lack of encouragement "from within the government institutions" contributed to the low ratio of women in the force, adding that it should at least be 10%.
- **(b)** However the number of policewomen was improving as their percentage had increased to 1.46% across the country from 0.94% a year ago.
- **(c)** Before blaming any individual or institution for the current situation, young female graduates have to take an initiative to opt for policing as a profession.
- **(d)** There is a lack of interest among educated women towards the profession. However, there are several other reasons as well behind the negative perceptions about the police force.
- **(e)** The girl's family also advises her not to join the profession. Even if one dares to join the profession, she doesn't encourage others to follow suit. That is because women personnel are not awarded key postings or regular policing jobs. They are always considered as a secondary part of the force in comparison to men.

SUGGESTIONS/REMEDIES/RECOMMENDATIONS/WAY FORWARD TO CONTROL GENDER-BASED CRIMES

I. Changing the General Attitude

The general attitude of the justice system needs a major change in order to do away with the gender-biased mindset. Gender sensitization can do little in the face of societal pressures. Specific gender policies will need to be initiated to tackle the core issue. Only then can women litigants and victims of crime be confident that they will be heard and justice will be served. Meanwhile, judges should be specifically trained to adjudicate upon gender issues. They must understand the sensitivity of rape, for instance, and should allow complete privacy to the victim, who has been brave enough to stand up for herself. These victims should be allowed to remain anonymous to protect their identity and life. Judges should be trained to adjudicate by looking beyond the existing social customs and norms, to uphold and safeguard the rights of women.

II. Equality or Justice

Equality means equal opportunity for all genders in education, economy, politics, and society. There are no quota systems for females in the equality model. On the other hand, justice means facilitating the under privileged sections of the society and women are certainly under privileged in Pakistan. Pakistan has introduced female quota in educational institutes as well as for job. More justice-based and gender-specific policies need to be introduced to uplift the status of women. It will also reduce female dependence on males and will lead to reduction in crimes against females.

III. Remedies for Criminal Investigation and Prosecution of Gender-based Crimes

Gender-based crimes generally include honour killings, acid, throwing rape, sexual harassment, prostitution, forced marriages and domestic violence.

- **(a)** In Pakistan, there is a gender imbalance in police force where most of the police force consist of males. There should be inclusion of more female police officers and female investigation officers in particular who may participate in investigation of gender-based crimes.

(b) There have been cases of sexual harassment and physical abuse of females at the police stations sometimes when they approach police stations as accused and other times as complainants to report crime.

(c) There is also need of changing the stereotypical attitude of police officers regarding females where some male police officers consider females as the motivator of sexual and domestic crimes.

(d) The ethical standards, integrity and respect of all genders must be ensured during the investigation process.

(e) Pakistan's prosecution system is also male-dominated. More female prosecutors should be engaged in prosecution of gender-based crimes where females are victims.

(f) There is also lack of female judges in Pakistan's judicial system. More female judges should be recruited in order to create a gender-balance in judiciary.

IV. Legal and Ethical Guidelines for Investigation of Gender-based Crimes

The treatment a sexual assault victim receives from first responders and investigators will likely impact their trust in the criminal justice system and their decision to move forward with their case or not. Therefore, it places a huge responsibility on the investigative bodies in order to ensure justice. Some legal and ethical guidelines and methods which could improve the investigation process are mentioned below.

(a) The case should be properly documented by documenting each report in writing. All reports should be taken as valid unless evidence proves otherwise.

(b) Victims of sexual assault may recant or decline prosecution for various reasons. A victim's reluctance to participate is neither indicative of a false report nor reason to forego a strong, evidence-based investigation.

(c) Strong sexual assault cases require strong written reports. A thorough report will identify on-scene evidence and document details from the victim's and suspect's accounts of the incident. This will assist those investigating to overcome consent challenges and serve to refresh memories for court testimony.

(d) When writing the report, ask the victim to describe the assault, listing as many details and feelings as possible. It is critical to capture the details necessary to establish elements such as premeditation by the perpetrator, coercion, threats and/ or force, and traumatic reaction during and after the incident.

(e) Document the elements of the crime by asking the victim to tell you what they thought, felt, and feared at the time of the assault.

(f) Silence is not consent. Detail and corroborate what "No" looked or felt like for the individual victim in your report.

(g) Create a timeline to show trauma/post-assault behaviour of the victim in context of previous behaviour.

(h) If the facts obtained from the investigation indicate use of force by the perpetrator, document using language that reflects this.

(i) The treatment the victim receives during the interview may impact the victim's decision to go forward with the case.

(j) Provide victims with information on how to obtain medical treatment and undergo a forensic exam and explain the medical significance of a sexual assault forensic examination.

(k) Strong sexual assault investigations are supported by physical evidence and do not rely solely on the victim or the perceived credibility of the victim. Prior victims should be interviewed and their statements included in the current investigation. Suspects often boast or brag about their sexual encounters to a friend or friends and their statement can provide powerful corroboration of the details of the assault.

(l) There is also need to establish and train officers on proper guidelines and procedures and create a system to review the coding and clearing of sexual assault cases with particular attention to reports determined to be false or unfounded.

CONCLUSION

Better understanding of the causes of violence against women will be useful in designing both prevention programmes and interventions with offenders. Criminological research has studied the progression of criminal careers. Yet little research has considered the development of violence against women and whether pathways to violence against women are similar to the development of other violent behaviours. Nor is it known if physical and sexual violence against women develop in a similar manner and what the nature and extent of the relations among them are. Identifying precursors to violence against women may be important for early intervention and prevention efforts. Although some of the direct effects of physical and sexual violence on individual women have been fairly well documented, understanding indirect effects to victims, the consequences to women in general, and consequences to the society as a whole is only beginning.

QUESTION 18

WHITE-COLLAR CRIME

Q. White-collar crimes. (Short Note CSS-2016)

Q. Define white-collar crime. Explain briefly the types of white-collar crime. Also suggest measures to control white-collar crime in Pakistan.

Q. What are the problems and issues in detection, prosecution and conviction of white-collar criminals in Pakistan? Discuss with reference to NAB's role in controlling white-collar crime.

ANSWER

INTRODUCTION

White-collar crime refers to those offences that are designed to produce financial gain using some form of deception. This type of crime is usually committed by people in the business world as well as some executive government people, who, as a result of their job position, are able to gain access to large amounts of other people's money. White-collar crime overlaps with corporate crime because the opportunity for fraud, bribery, insider trading, embezzlement, computer crime and forgery is more available to white-collar employees. White-collar crimes have a drastic effect over the economy and financial state of a country. A broad range of white-collar crimes are perpetrated each day in Pakistan. Examples include tax evasion, insider trading, insurance fraud, bribery, embezzlement, and money laundering. Some offenses are committed on a small scale, like when individuals filing for liquidation bankruptcy fail to disclose personal assets on their petition. Other times, a single fraud can affect the lives of hundreds or thousands of people, such as investment frauds committed by securities brokers.

DEFINITION OF WHITE-COLLAR CRIME

Within the field of criminology white-collar crime has been defined by Edwin Sutherland as "A crime committed by a person of respectability and high social status in the course of his occupation." White-collar crime is said to have three characteristics: it is non-violent; it is financially motivated; it is committed by "business and government professionals". White-collar criminals use their positions of trust in business or government to commit crimes.

Sutherland's definition in itself provides for two unique features of white-collar crimes. Firstly, white-collar crimes are committed by people of high social status and secondly, these crimes are a result of occupational roles. This definition also differentiates white-collar crimes from other ordinary crimes which are called conventional crimes. White-collar crime is categorized it into four main forms, namely fraud, corruption, manipulation and theft.

WHAT IS CORRUPTION?

Corruption is the abuse of entrusted power for private gain, and public corruption as the misuse of public office for private gain, or more broadly as an abuse of public trust. Boles defines corruption as a concealed abuse of a position of trust by an expectation that one will do what one is relied on to do. Transparency International define corruption as the abuse of entrusted power for private gain. Oxford dictionary describes corruption as "Fraudulent and dishonest act by those in power typically involving bribery."

WHITE-COLLAR CRIME: A NON-VIOLENT CRIME

The white-collar crimes are not dependent on the application or threat of physical force or violence. The motivation behind these crimes is always financial. By its nature, white-collar crime is non-physical, covert and immediate in impact. These crimes are more complex and require more planning and organizing. Therefore, the violators are also different than the criminals who are involved in ordinary crimes. White-collar crimes victimize organization rather than individuals and white-collar criminals are more likely to be employed, they have high education and have almost non-existent prior criminal justice record.

Is white-collar crime really 'non-violent'? Here's the record: 290,000 new-born Pakistanis die every year before the end of their first month; 175,000 Pakistani children die annually due to premature birth; and 53,000 Pakistani children die of diarrhoea caused by contaminated water every year. Pakistan is the "riskiest country for new-borns – riskiest in the world". But, a single scam can destroy a company, devastate families by wiping out their life savings, or cost investors billions of rupees or even all three.

WHITE-COLLAR VS. BLUE-COLLAR CRIME

White-collar crimes, in contradistinction to blue-collar crimes, have no official legal classification as they belong to a general net group of crimes. The term "blue-collar crime" was originally coined to mean those crimes committed by individuals from the working or lower class of the society, who normally wore blue shirts because of the nature of their work. Today blue-collar crimes are typically those crimes that are fuelled by passion, rage or other emotions. The process of industrialization encouraged working-class incorporation into the society with greater social nobility achieved during the 20th century. While blue-collar crime is committed in violation of the laws of a country and may be prosecuted and punished according to law, white-collar crimes on the other hand originally referred to those crimes committed by individuals with a higher social status or upper-level occupation that often required them to wear a suit and a white-collared shirt. In this day and age, white-collar crimes are those which are generally committed in a business setting and are considered to be non-violent. White-collar crimes are also committed by public office holders and directors of public and private sector corporations. Some people refer to white-collar crimes as "paper crimes". A few examples of white-collar crimes include wire fraud, forgery, embezzlement, money laundering and more.

It was in this scenario that the need arose for sociologists such as Edwin Sutherland and later on John Baker Junior, to highlight the requirements for the legal fraternity and the judiciary to consider substituting the age-old criminal law principle of treating a criminal as innocent unless proved guilty beyond a shadow of doubt, by doing away with the *principle of presumption of innocence* and proof of guilt beyond a shadow of doubt, in the case of white-collar crimes, since the number of white-collar crimes simultaneously increased with the increase in industrialization, international business, trade, modernization of e-commerce and e-banking, etc. They strongly suggested for the white-collar criminals to prove their innocence, since their action, if unpunished, brought serious consequences in the society, increasing corruption, economic chaos, political instability at times, and a Strong perception amongst the people that there was one law for the poor being punished for crimes affecting individuals and a different law for the rich, affecting society at large and remaining unpunished.

White-collar criminals include business managers, fund managers and executives committing financial fraud. Individuals can face prison time and steep fines if they are convicted. The State can also pursue financial damages from corporations and banks that commit white-collar crime at an institutional level. One of the most well-known white-collar criminals was Bernard Madoff, who was convicted in 2009 of massive fraud that cost investors $65 billion. Madoff, sentenced to 150 years in prison, ran an elaborate Ponzi scheme, which promised large returns on investments. Corporate white-collar crime usually involves large-scale fraud perpetrated throughout the institution. For instance, in 2014 Credit Suisse pleaded guilty to helping US citizens avoid paying taxes by hiding income from the Internal Revenue Service (IRS). The bank agreed to pay penalties of $2.6 billion. Also in 2014, Bank of America acknowledged that it sold billions in mortgage-backed securities (MBS) tied to properties with inflated values. These loans, which did not have proper collateral, were among the types of financial misdeeds that led to the financial crash of 2008. Bank of America agreed to pay $16.65 billion in damages and admitted to its wrongdoing.

TREATMENT OF UPPER-CLASS CRIMINALITY

White-collar crimes are also punished by criminal laws and criminal justice of the State. But they are not considered as offence in a similar manner as other street offences. Criminologists and criminology dealt with the activities of the lower class offenders in the early days of criminology. They populated courts and prisons. They were mostly involved in burglary, assault, theft and murder, etc. Many of the criminologists and researchers were of the view that these causes arose from the pathological factors of the offenders, from poverty and from deprivation. This idea was challenged in 1939 by the famous US criminologist Edwin Sutherland. He proposed an alternative idea: "persons of the upper socio-economic class engage in much criminal behaviour; this criminal behaviour differs from the criminal behaviour of the lower socio-economic class principally in the administrative procedures which are used in dealing with the offenders and that variations in administrative procedures are not significant from the point of view of causation of crime."

IMPORTANCE OF STUDYING WHITE-COLLAR CRIME

In the late 1930s, the distinguished criminologist Edwin Sutherland first used the phrase "white-collar crime" to describe the criminal activities of the rich and powerful. He defined white-collar crime as "a crime committed by a person of respectability and high social status in the course of his occupation." As Sutherland saw it, white-collar crime involved conspiracies by members of the wealthy classes to use their position in commerce and industry for personal gain without regard to the law. Often these actions were handled by civil courts because injured parties were more concerned with recovering their losses than with seeing the offenders punished criminally. Consequently, Sutherland believed that the great majority of white-collar criminals did not become the subject of criminological study. Yet the cost of white-collar crime is probably several times greater than all the crimes customarily regarded as the crime problem. And, in contrast to street crimes, white-collar offences breed distrust in economic and social institutions, lower public morale, and undermine faith in business and government.

IMPACT OF WHITE-COLLAR CRIME

White-collar crimes affect all aspects of our lives, i.e. public sector, financial sector, political system, etc. The criminal activities of the most talented and highly educated individuals harm the entire fabric of the society. Greed, opportunity, a sense of entitlement, arrogance, competitiveness, loopholes in corporate and legal structures, and justifications are also some of the motivating factors for white-collar crimes. The major causes of prevalence of white collar crimes are peer support, corporate culture, lack of accountability, fragile political system and lack of reporting.

Looking at the economic, political and social costs of white-collar crimes in Pakistan, these should be seriously considered by the criminal justice system of Pakistan, which unfortunately is not the case. Somehow, those in power, almost always evade the law by pre-arrest bails and delayed trials. There's hardly any harm to the white-collar criminal's reputation let alone any strict penalties. White-collar crime offenders have influenced the fabric of the society in such a way that have affected the ethics and values which people normally try to maintain in a society.

INHERENT CAUSES OF WHITE-COLLAR CRIME

Generally, white-collar crime is caused by greed, economic difficulty, opportunity to commit crime and situational pressure. The inherent characteristic to get more than others is one of the major causes of white-collar crime. One school of thought in criminology is of the view that personality disorders can also shape criminal tendencies in human beings. It takes personality disorders like narcissism and anti-social personality disorders to commit white-collar crimes.

Lack of accountability, opportunity to commit crime, peer support, greed, and loopholes in legal structures, lack of reporting and staying in competition are some of the factors with which most of the experts agreed to be the causes of white-collar crimes except for corporate culture. Some preventive measures are regularly reviewing policies and designing audit and fraud-detection activities in an efficient and effective manner. One of the preventive measures to curb white-collar crimes is the reduction of opportunities of crime by changing organizational structures. Preventive measures to control white-collar crimes include reviewing policies regularly, reducing opportunities to commit crime, observing ethics, enforcement of current laws, etc.

The motives behind the commission of white-collar crimes primarily are the wish for control in society, fear and anxiety of dwindling from the social status, lack of social consciousness and integrity, weak and ineffective internal controls of organizations and departments, greed and hunger of wealth, monetary and financial gains and ineffective and ineffectual corporate culture in economy. The costs of white-collar crimes are both financial costs as well as social costs. When we analyzed the financial costs faced as a consequence of white-collar crimes, same are run in billions per year due to which economies and political systems of developing countries like Pakistan suffer. In addition to economic burden on economy, these crimes also result in a sharp decline in the quality of life, a weaker political/ social order and inflation. Financial cost and impacts of white-collar crimes are much more than the cost suffered due to all the street crimes

REASONS FOR INCREASE IN WHITE-COLLAR CRIME

Increase in industrialization and manufacturing of almost all products through modern, technical and sophisticated processes and increase in international trade/business, e-commerce and e-banking has resulted in a wide range of white-collar criminals in the business world going unpunished for want of compatible training in investigation and prosecution agencies, leaving many white-collar crimes without prosecution and punishment.

White-collar crimes are protected by professionals. These crimes are on the rise due to the advent of technology and growth of education. These professionals find weaknesses in judicial system and find direct or indirect political support and involvement from the government authorities to facilitate white-collar criminals. Inadequate supervision and lack of internal auditing lead to white-collar crimes.

NATURE AND TYPES OF WHITE-COLLAR CRIME

The most common white-collar offenses include antitrust violations, bankruptcy fraud, bribery, computer and internet fraud, counterfeiting, credit card fraud, economic espionage and trade secret theft, embezzlement, environmental law violations, financial institution fraud, government fraud, health care fraud; insider trading, insurance fraud, intellectual property theft/piracy, kickbacks, mail fraud, money laundering, securities fraud, tax evasion, phone and telemarketing fraud, and public corruption.

Different forms of white-collar crimes as narrated in Section 9 of the National Accountability Ordinance, 1999 under the definition of the offence of corruption and corrupt practices:

(i) receiving of gratification by a public office holder

(ii) acceptance of any valuable thing without consideration

(iii) if the public office holder dishonestly or fraudulently misappropriates any property entrusted to him

(iv) unlawfully obtaining of any property/ valuable thing

(v) getting of pecuniary advantage and pecuniary resources disproportionate to his known sources of income being a public office holder

(vi) accused under the National Accountability Ordinance, 1999, if he misused his authority to gain any illegal benefit

(vii) Issuance of SRO (Statutory Regulatory Order) to grant concession or benefit in any taxation matter, etc.

(viii) offence of wilful default

(ix) offence of cheating and dishonestly inducement to the members of public

(x) offence of criminal breach of trust against the members of public at large

(xi) offence of criminal breach of trust by a banker, merchant, factor, broker and attorney or agent.

To be precise, main types of white-collar crime include

1. **Embezzlement:** The taking of someone's property by a person with whom it is entrusted.
2. **Larceny:** Involves taking someone's property without paying for or returning it.
3. **Extortion:** Illegal use of one's official position or powers to obtain property, funds, or patronage; also known as blackmailing.
4. **Fraud:** This often includes but is not limited to health care fraud and tax fraud.
5. **Price Fixing:** An agreement between two parties to set prices for a certain product, thereby violating free market operations and rules of Competition Commission of Pakistan.
6. **Racketeering:** The extortion of money by force or a pattern of criminal activity committed to further the interests of a criminal syndicate.
7. **Computer Fraud:** Using a computer or technological devices to commit a crime.
8. **Securities and Commodities Law Violations:** Environmental Law Violations.
9. **Bank Fraud:** To engage in an act or pattern of activity where the purpose is to defraud a bank of funds.
10. **Racketeering:** The operation of an illegal business for personal profit.
11. **Tax Evasion:** When a person commits fraud in filing or paying taxes.
12. **Bribery:** When money, goods, services, information or anything else of value is offered with intent to influence the actions, opinions, or decisions of the taker. You may be charged with bribery whether you offer the bribe or accept it.
13. **Cellular Phone Fraud:** The unauthorized use, tampering, or manipulation of a cellular phone or service. This can be accomplished by either use of a stolen phone, or where an actor signs up for service under false identification or where the actor clones a valid electronic serial number (ESN) by using an ESN reader and reprogrammes another cellular phone with a valid ESN number.
14. **Cyber Crime:** Where computer hackers steal information sources contained on computers such as: bank information, credit cards, and proprietary information.
15. **Insider Trading:** When a person uses inside, confidential, or advance information to trade in shares of publicly-held corporations.

16. **Insurance Fraud:** To engage in an act or pattern of activity wherein one obtains proceeds from an insurance company through deception.
17. **Investment Schemes:** Where an unsuspecting victim is contacted by the actor who promises to provide a large return on a small investment.
18. **Kickback:** Occurs when a person who sells an item pays back a portion of the purchase price to the buyer.
19. **Larceny / Theft:** When a person wrongfully takes another person's money or property with the intent to appropriate, convert or steal it.
20. **Money Laundering:** The investment or transfer of money from one country to another mostly earned through other white-collar crimes and other crimes like from racketeering, drug transactions or other embezzlement schemes so that it appears that its original source either cannot be traced or is legitimate.
21. **Telemarketing Fraud:** Actors operate out of boiler rooms and place telephone calls to residences and corporations where the actor requests a donation to an alleged charitable organization or where the actor requests money up front or a credit card number up front, and does not use the donation for the stated purpose.
22. **Welfare Fraud:** To engage in an act or acts where the purpose is to obtain benefits (i.e. Public Assistance, Food Stamps, or Medicaid) from the State or federal government.
23. **Weights and Measures:** The act of placing an item for sale at one price yet charging a higher price at the time of sale or short weighing an item when the label reflects a higher weight.

The frauds mentioned in the preceding paragraph require particular expertise in each of the category. For example, the corporate crime has the potential to cause significant financial losses to investors, corporate fraud can cause immeasurable damage to economy and investor's confidence. The investigators have to focus their efforts on cases involving accounting schemes, self-dealing by corporate executives, and obstruction of justice. The objectives could be achieved by including the specialists of the field into the law enforcement units.

NOTABLE CASES OF WHITE COLLAR-CRIME IN PAKISTAN

In Pakistan, the most common examples of such scams and organized corruption by white-collar criminals are found when institutions and regulatory bodies indulge in corruption by way of illegal and poor decision-making and not enforcing rules which is detrimental to the national as well as to the institutional interests, especially the poor general public. Such illegal and poor decision-making and failure on the part of public institutions can be seen and traced in the scandals like the National Insurance Corporation Limited (NICL) scam, Punjab Bank Scandal, the Rental Power Projects (RPPs), Independent Power Producers (IPPs), Forex scam, Double Shah scam, Land and Property scams some time on behest of political elite and political patronizes, Modarba Scams, etc. where the top decision-making apparatus allegedly took decisions resulting in billions of rupees worth loss to these organizations, the general public and the national exchequer.

CRIMINAL JUSTICE RESPONSE TO WHITE-COLLAR CRIME IN PAKISTAN

Legislations to Counter White-collar Crime in Pakistan

- Prevention of Corruption Act, 1947
- Public and Representative Office Disqualification Act, 1949 (PRODA)

- Elective Bodies (Disqualification) Order, 1959 (EBDO)
- Pakistan Criminal Law Amendment Act, 1958
- Ehtesab Act, 1996 (Repealed)
- National Accountability Bureau Ordinance, 1999
- Other Related Laws
- Pakistan Penal Code, 1860
- Criminal Procedure Code, 1898
- Income Tax Act
- Customs Act
- Recovery of Loan Ordinance

The curbing of white-collar crimes and accountability of the criminals, efforts are being made through an elaborate set of laws/ rules and institutions, both at the Federal and provincial levels. The Federal Investigation Agency (FIA) and the National Accountability Bureau (NAB) are dealing with white-collar crimes at federal level and in the provinces the Anti-corruption Establishments are functioning to investigate and prosecute the white-collar criminals. The main anti-corruption laws include the National Accountability Bureau Ordinance, 1999, the Federal Investigation Agency Act (FIA), 1975, Anti-corruption Establishment Act, 1961; the Anti-corruption Establishment Act, 1961, the Prevention of Corruption Act (PCA), 1947; and the Pakistan Penal Code (PPC) 1860. The latest law i.e., NAB 1999, established the National Accountability Bureau, with wide powers. Additionally, special courts were also established under the NAB 1999 with the prime motive to provide speedy justice in corruption/ white-collar crimes cases which are operating under the respective High Courts.

FEDERAL INVESTIGATION AGENCY (FIA) IN PAKISTAN

In Pakistan, the FIA and NAB are the agencies responsible for prosecuting white-collar criminals. The conviction rate at the FIA is 6.6%. Till 2004, the primarily role of FIA was to investigate the cases of corruption and white-collar crime. In 2004, government transferred anti-corruption and economic crime functions to the NAB.

PAKISTAN PENAL CODE, 1860

Section 161 to 165-A Pakistan Penal Code, 1860, Section 5 of the Prevention of Corruption Act, 1947 and section 9 of the National Accountability Ordinance, 1999 are the main tools in the hands of enforcement agencies of anti-corruption laws. The provincial anti-corruption establishment uses the first two sets of laws while the National Accountability Bureau uses the third set of laws.

- Section 161 PPC: Public servant taking gratification other than legal remuneration in respect of an official act.
- Section 162 PPC: Taking gratification, in order, by corrupt or illegal means, to influence public servant.
- Section 163 PPC: Taking gratification, for exercise of personal influence with public servant.
- Section 164 PPC: Punishment for abetment by public servant of offences defined in Section 162 or 163
- Section 165 PPC: Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.

- Section 165-A: Punishment for abetment of offences defined in Sections 161 and 165.

NATIONAL ACCOUNTABILITY BUREAU ORDINANCE, 1999

The National Accountability Bureau (NAB) was established in 1999 by the then military government for curbing the overwhelming rise of corruption in every public sector department during the tenure of the political governments in the preceding decades. NAB had vested with wide range of powers in the matters of arrest, investigation and prosecution. Establishment of NAB started a new era in anticorruption mechanism through a three-pronged strategy: awareness, prevention and enforcement were introduced as totally opposite to the past practice merely relying on enforcement-oriented measures.

The promulgation of National Accountability Ordinance was a step forward to make efforts to eliminate corruption and corrupt practices, to provide effective measures to the society by setting up an institution of National Accountability Bureau.

The National Accountability Ordinance repealed the Ehtesab Act, 1997, and all the pending proceedings would be transferred to the NAB, from the date of promulgation of the Ordinance.

The prevention of corruption act was the first legislation in an effort to control/eradicate corruption from the country. This Act is still in force but failed to achieve the objects. Then the federal government in November 1999 promulgated the National Accountability Ordinance. The Act was made applicable not only to public servants but its scope was extended to "holders of public office" and "persons" involved in corporate business.

POWERS OF CHAIRMAN NAB

The chairman NAB powers to order arrest of the accused. Accused must be informed of the grounds of his arrest.

POWERS TO SEEK ASSISTANCE

According to Section 27 of NAB 1999, the chairman NAB has the power to seek full and complete assistance and call for all or any documents and information relevant to or in connection with any matter or proceedings pending before the NAB, from any department of the federal government, provincial government, local authority, bank, financial institution, person or any authority and institution or department in the public sector or the private sector, as he may deem it fit and proper to demand or require, provided that in any case in which a question of secrecy is involved or is raised at time, the chairman's decision shall be final.

POWERS OF THE COURT TO FREEZE PROPERTY

If there appear reasonable grounds for believing that the accused has committed such an offence, the Chairman NAB can order the freezing of his property, movable or immovable, or part thereof, whether in his possession or in the possession of any relative, associate or person on his behalf.

The Accountability Court has exclusive jurisdiction to entertain and adjudicate upon all claims or objections against the freezing of any property under Section 12. Such claims or objections are made before the Accountability Court within 14 days from the date of the order, freezing such property.

INTERNATIONAL COOPERATION REQUEST FOR MUTUAL LEGAL ASSISTANCE

The chairman NAB or any officer authorized by the federal government may request a foreign state to cooperate in accordance with the law of such State; to have evidence taken, or documents or other articles produced.

PUNISHMENTS FOR CORRUPTION AND CORRUPT PRACTICES

A person who commits the offence of corruption and corrupt practices is punishable with imprisonment for a term which may extend to 14 years, or with fine, or with both, and such of the assets and property of such person which is found to be disproportionate to the known sources of his income or which is acquired by money obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or *benamidars* shall be liable to be forfeited to the appropriate government.

VOLUNTARY RETURN AND PLEA BARGAIN

Where before the commencement of the trial at any time thereafter, with the leave of the Court, the holder of a public office or any other person accused of any offence under this Ordinance voluntarily returns to the NAB, the assets or gains acquired through corruption or corrupt practices and discloses the full particulars relating thereto, the chairman NAB, may release the accused person with the leave of the Court, or, proceed with the trial subject to such conditions if any, as may be imposed by the Court.

NARRATIVES ABOUT PLEA BARGAIN

The critics of plea bargain say that it is actually a licence for white-collar criminals to commit crime. The critics say that since the main emphasis of NAB has been on plea bargains to pocket hefty amounts as "share" out of looted funds, the offenders remained unpunished by paying peanuts. On the other hand, NAB claims that the investigation and prosecution of white-collar crime cases is too extensive, expensive and securing convictions is also difficult because of accused's access to high-profile lawyers. Therefore, plea bargain is a viable option to recover some money.

NAB'S PERSPECTIVE ABOUT ITS PERFORMANCE

In a report released in response to allegations by politicians of "character assassination" and "campaign for tarnishing of image", NAB claimed an impressive overall performance with a prosecution rate of 70% and not 7% as claimed by the prime minister. NAB claims to have recovered more than 300 billion rupees since its inception..

PROBLEMS IN PROSECUTION AND PUNISHMENT OF WHITE-COLLAR CRIME

1. Financially well off criminals

White-collar criminals, whether in business or public office, wield tremendous powers and influence over institutions and people, working therein as facilitators to their crimes. Since the wealth so acquired by such people is ill-gotten, in order to conceal the crimes and the wealth, such persons transfer the ill-gotten wealth in the name of their spouses and children or in foreign banks or in the name of off-shore companies to conceal any evidence and remove all traces of the movement of their wealth from the country of origin.

2. High-profile Defence Lawyers

In the face of age-old criminal law of Pakistan, identification, investigation, prosecution and punishment are almost impossible with high-profile lawyers being engaged by the accused to defend white-collar criminals challenging the courts jurisdiction, constitutional guarantees, fair trial, claim of presumption of innocence and proof of guilt beyond a shadow of doubt.

3. Lack of Credibility

The institutions responsible for preventing and controlling white-collar crime and corruption do not enjoy credibility. The agencies formed to control and eradicate corruption are generally believed to be victims of corruption themselves and tools of victimization in the hands of the political masters.

4. Political Interference

Political interference is a constant irritant in the working of agencies. To avoid this problem, the chairman NAB in 2005 delegated certain powers to the Regional Director Generals. This has transferred crucial decision-making, like ordering of investigations, arrests, filing of references, etc. from individual domain to collective domain. Accordingly, this delegation has made better and prompt decision-making. However, it remains a fact that political interference remains a big challenge for all government agencies likewise NAB

5. The concept of "Presumption of Innocence"

The concept of "presumption of innocence" in criminal law, i.e. the accused is presumed to be innocent until proven guilty beyond reasonable doubt, seems to be the bastion of fairness and the standard of criminal culpability against which the accused is judged to be given a fair trial. In an ideal world with the present notions of criminology, this seems to be the very backbone of criminal jurisprudence prevalent in all civilized societies of the world, against alleged murderers, rapists, thieves and thugs. The question has often arisen, whether the same standard should be applicable to the executives of corporations and people who are at the helm of affairs, not only in the corporate world but in the arena of politics and governance holding public office with immense power and influence. Such are the people who often exercise these extraordinary powers to their own advantage and benefit and at the expense of the masses. It is reasonable to say that the notion of responsibility should not be divorced from such people who hold such powerful public or private offices.

Prof. Edwin Sutherland, a sociologist who coined the term "white-collar crime", while disagreeing with certain basic substantive and procedural principles of criminal law, in his landmark book White-Collar Crime published in 1949, dismissed the traditional mens rea (criminal intent) requirement and the presumption of innocence. He suggested that the rule of criminal intent and presumption of innocence are not required in all prosecutions in criminal courts and the number of exceptions authorized by statutes is increasing. Sutherland relied on the claim that both corporate and individual defendants are routinely deprived of the presumption of innocence in criminal proceedings. Often when convinced that a person or class of persons is guilty of white-collar crime, people become impatient with legal niceties. Sutherland and others, who assume the guilt of much of the business world, believe that the ordinary protections of the law also need not apply to persons involved in business.

The term "white-collar crime" has expanded even further to include such a wide array of crime that it has become too amorphous for analysis and some sociologists even find Sutherland's very loose definition as being too restrictive. Thus, white-collar crime has now become a division of organizational crime. One example includes the US Justice Department's efforts in some countries to force corporations to waive their privilege against self-incrimination as a condition of pleading guilty. This nascent trend is consistent with and sociologically derived from Sutherland's thesis that white-collar criminals are not entitled to the same constitutional protections afforded to other defendants.

SUGGESTIONS/REMEDIES/RECOMMENDATIONS/WAY FORWARD

The main preventive measures as a way forward that can be taken by organizations, public institutions, regulatory bodies and the agencies of state to curb, control and minimize the white-collar crimes:

1. Firstly, banks and credit card issuers should review their policies from time to time in order to prevent credit card frauds and credit cards should not be issued to "faceless" people.
2. Secondly, as it is deducted from above discussion that one of the major causes of committing white-collar crimes is the opportunity to commit these crimes, therefore, a preventive measure should be taken in reducing the opportunity to commit frauds and design audit and fraud detection systems more effective and efficient.
3. Thirdly, organizational structures and processes should be designed in such a way to reduce opportunity for violations against the regulations.
4. Fourthly, a number of offences are happened to be committed by political persons, officers, executives and managers posted at higher levels of the organizations, so this trend must be stopped and controlled.
5. Fifthly, different steps can be taken to re-assure public that fraud, bribery, embezzlement, etc. will not be tolerated. Some of these steps are structural reforms, managerial actions, enforcement of current laws and publicized punishments for the white-collar criminals.
6. Sixthly, the particular opportunity structure that allows an offence to occur in an organization must be identified first and in this way that crime can be prevented.
7. Seventhly, we need a definite change in corporate structures and attitudes, intervention and will of political government to introduce corporate changes and legal improvements in legal system to punish the white-collar criminals and to control corporate as well as white-collar crimes.
8. Eighthly, the governments of this country should curb the white-collar crimes and take necessary measures and actions to improve the performance and functioning of the anti-corruption agencies, i.e. the Federal Investigation Agency (FIA), the National Accountability Bureau (NAB) and the Anti-corruption Establishments, so that these agencies must take strict action against the white-collar offenders to recover the looted money.

1. Implementation of Existing Laws

Keeping in view the present state of affairs in Pakistan, there is a dire need for the legislative body and courts to take immediate measures to ensure strict implementation of existing laws of NAB, FIA, FBR, SECP, and State Bank. A legal system needs to evolve, one that protects the society from the enormous consequences of white-collar crimes committed by directors, chief executives of corporations and public office holders.

2. Need for Pro-active Policies

Nowadays fraud schemes are turning more sophisticated than ever, and law enforcement agencies across the world are using their skills to track down the culprits and stop scams before they start. Unfortunately, we are still clueless in this regard. We have a tendency to react, rather adopting proactive approach to fight criminal activity. The government does not seem inclined to recruit professionals across different fields including, software engineers, fraud investigators, forensic science technicians, computer forensic investigators, blood spatter analyst, etc. Besides, there is a need to enhance the capacity of micro-level law enforcement officers as they play a crucial role in the investigation of any case.

3. Deterrence Strategies

Some criminologists say that the punishment of white-collar crimes should include a retributive component similar to that used in common-law crimes. White-collar crimes, after all, are immoral activities that have harmed social values and deserve commensurate punishment. Even the heavy fines and penalties are no more than a slap on the wrist to multibillion-dollar companies. Corporations can get around economic sanctions by moving their rule-violating activities overseas, where legal controls over injurious corporate activities are lax or non-existent. They argue that the only way to limit white-collar crime is to deter potential offenders through fear of punishment. Perceptions of detection and punishment for white-collar crimes appear to be powerful deterrents to future law violations.

Deterrence strategies involve detecting criminal violations, determining who is responsible, and penalizing the offenders to deter future violations. Deterrence systems are oriented toward apprehending violators and punishing them rather than creating conditions that induce conformity to the law. Deterrence strategies should work – and they have – because white-collar crime by its nature is a rational act whose perpetrators are extremely sensitive to the threat of criminal sanctions.

4. General Deterrence

While retribution is important as a stamp of a society's disapproval of a particular conduct, the governing principle of "sentencing" in cases of the kind with which we are concerned is general deterrence. The sentence must be exemplary and sufficient so that members of the business community are put on notice that if they break the trust which has been reposed in them, they will receive proper punishment. It is vital not only in the interests of the business community but in the interests of society that leaders of that community act honestly in all their dealings. Any slip from the high standards demanded of directors can put at risk the fortunes of their company and also the fortunes (large or small) of those who invest in them. In extreme cases the misconduct can affect the economy as a whole.

5. Reduction of Crime Opportunities by Changing Organizational Structures

The "fraud triangle" specifies three motives for employees to commit crime. They are opportunity, pressure and excuses. Some preventive measures are regularly reviewing policies and designing audit and fraud-detection activities in an efficient and effective manner. One of the preventive measures recommended to curb white-collar crimes is the reduction of opportunities of crime by changing organizational structures. If the managers and executives observe ethics, white-collar crimes can be reduced.

6. Need for Coordination

There is a need to focus on complex investigations — often with a nexus of organized crime activities — that are international, national, or regional in scope. The law enforcement agencies have to acquire unique expertise or capabilities that increase the likelihood of successful investigations. The investigators have to work closely with partner law enforcement and regulatory agencies such as the NAB, FIA, Security and Exchange Commission (SECP), the FBR, Health Ministry, Customs, Provincial Excise and Anti-Narcotics Force (ANF) for targeting sophisticated, multi-layered fraud cases that harm the economy.

7. Need for Skilled and Expert Investigators

The investigative agencies in Pakistan lack room for the people of higher calibre or have never introduced a window of opportunity for highly-skilled professionals like, chartered accountants, forensic experts, computer programmers, pathologists, criminal profilers, etc. In white-collar crimes the initial investigation must be conducted by the highly qualified investigators otherwise the process would run on a wrong track signifying nothing.

While rates of violent crime continue to fall across the globe, the white collar crime – complex criminal schemes involving fraud and theft – is on the rise. Sophisticated criminals risk slipping through the prosecutorial net unless they are matched with specialized and talented investigators and prosecutors. The programmes of the International Institute of White Collar Crime, through professional training and technical assistance, aim to equip law enforcement investigators, prosecutors, defenders and judges with the knowledge and tools necessary to successfully prosecute white-collar crime and emerging criminal schemes.

8. Changing Morality

The challenge to corruption has to be multi-dimensional. People need to think beyond. We need to make use of a revived judiciary, a vibrant media, politically aware and charged masses, strengthened civil society, and receptive political parties to revive the old culture with old values which glorified honesty and scorned corruption.

9. Encouragement of Whistle-blowers

Many white-collar crimes are especially difficult to prosecute because the perpetrators use sophisticated means to conceal their activities through a series of complex transactions. Whistle-blowers are particularly helpful, because they report internal wrongdoing that may be invisible outside the company. How the offender is penalized under the law of the land as guilty of such offences? There are multiple agencies in Pakistan to investigate and prosecute cases related to white-collar crime.

10. Targeting Professional Money Laundering

Money laundering undermines the integrity and stability of financial institutions and systems by discouraging foreign investment and can distort international capital flows. The process can be monitored by targeting professional money launderers, key facilitators, gatekeepers and complicit financial institutions. By keeping an eye on the methods in use by the criminals of money laundering like complex financial crimes, human trafficking, international and domestic public corruption, narcotics trafficking and terrorism.

CONCLUSION

Political will against white-collar crime and corruption must be openly displayed and propagated by the highest echelons of government and state through regular engagement with public, personal attendance at workshops, seminars and appearance at other public events. Political leadership must set up examples of high morals and ethics for others to follow. Bending the law, beating the system or escaping punishment – and getting away with it – define impunity for corrupt, such impunity must end.

QUESTION 19

MONEY LAUNDERING

Q. Discuss the laws and institutional arrangements for controlling money laundering in Pakistan. (CSS-2018)

Q. Money laundering in Pakistan. (Short Note CSS-2017)

Q. Money Laundering. (Short Note CSS-2016)

Q. Define Money Laundering. Discuss the Stages and Channels of Money Laundering. Also suggest practical remedial measures to control money laundering in Pakistan.

Q. Discuss the role of money laundering in terror financing. Also analyse the role of FATF in controlling international money laundering with special reference to FATF recommendations for Pakistan.

ANSWER

INTRODUCTION

In its definition, money laundering is the clandestine movement of money from one country to another without notifying it to the government authorities. The Financial Action Task Force (FATF) defines money laundering as "the processing of criminal proceeds to disguise their illegal origin." Money laundering is recognized as a crime in domestic law worldwide. Money laundering can be committed through several kinds of financial and commercial activities, for instance digital money transfers, cash transactions, credit card payments, offshore property building, and wire transfers. The primary objectives of money laundering include evading taxes, disguising ill-gotten incomes, and converting illegally-earned money into legitimate assets.

REASONS FOR INCREASE IN MONEY LAUNDERING

Money laundering has increased in the world at an alarming pace. There are multiple reasons for this increase. Rapid developments in financial information, technology and communication allow money to move anywhere in the world with speed and ease. This makes the task of combating money laundering more urgent than ever. The deeper "dirty money" gets into the international banking system, the more difficult it is to identify its origin. Because of the clandestine nature of money laundering, it is difficult to estimate the total amount of money that goes through the laundry cycle.

There have been a number of developments in the international financial system during recent decades that have made the three Fs – finding, freezing and forfeiting of criminally derived income and assets – all the more difficult. These are the "dollarization" (i.e. the use of the United States dollar in transactions) of black markets, the general trend towards financial deregulation, the progress of the Euromarket and the proliferation of financial secrecy havens.

Fuelled by advances in technology and communications, the financial infrastructure has developed into a perpetually operating global system in which "megabyte money" (i.e. money in the form of symbols on computer screens) can move anywhere in the world with speed and ease.

THE VOLUME OF MONEY LAUNDERING

The international community loses hundreds of billions of dollars every year due to trade-based money laundering, says a US report which identifies China, Russia, Mexico and India as the top four sources of illicit financial outflows.

The report identifies India as the fourth largest source of illicit financial outflows in the world. It notes that India's main money laundering vulnerability comes from a widespread lack of access to formal financial institutions, particularly in the rural sector, that has resulted in the growth of informal financing networks.

The report also refers to a study by a United States think-tank, the Global Financial Integrity (GFI), which estimates that India loses up to $51bn every year due to illicit financial outflows. China tops the GFI list with $139bn average outflow of illicit finances per annum, followed by Russia ($104bn) and Mexico ($52.8bn).

The estimated amount of money laundered globally in one year is 2-5% of global GDP, or $800 billion - $2 trillion in current US dollars. Though the margin between those figures is huge, even the lower estimate underlines the seriousness of the problem governments have pledged to address. However, the above estimates should be treated with caution. They are intended to give an estimate of the magnitude of money laundering. Due to the illegal nature of the transactions, precise statistics are not available and it is therefore impossible to produce a definitive estimate of the amount of money that is globally laundered every year. The FATF therefore does not publish any figures in this regard.

HOW MUCH MONEY IS LAUNDERED OUT OF PAKISTAN?

The practice of money laundering also costs Pakistan more than $10bn a year. In Pakistan, estimates of illicit financial flows put over $10bn as escaping taxation and being siphoned off outside the country. This is with nearly one-third of the population living below the poverty line.

THREE STAGES OF MONEY LAUNDERING

Money is laundered in the following three steps:

1. Placement

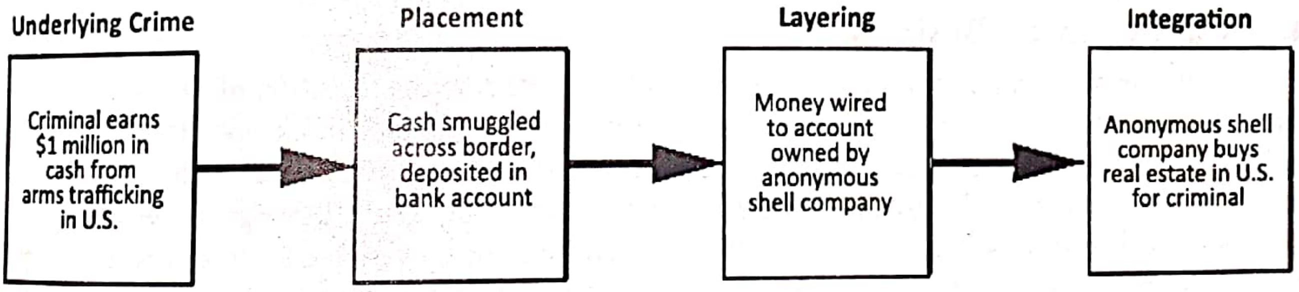
The first step is related to depositing cash funds in foreign banks. This step is called placement, as the funds are placed in foreign banks without drawing the attention of national authorities.

2. Layering

The second step is linked to carrying out financial transactions, cash withdrawals, wire transfers, etc. and hiding the original source of money. This step is called layering, as the money launderer performs several financial transactions, which act as layers of cash. Online transactions, notably wire transfers, are the quickest way of layering, as multiple cash transactions can occur speedily through them.

3. Integration

The third step is related to the use of money for investment or any other action. This step is called the integration of funds, as the laundered money is actually used at this stage. When money has reached this step, it becomes difficult or almost impossible for the Anti-Money Laundering to track the laundered money, unless a trial or investigation had started when the money was in the first or second stage.


Underlying Crime
Placement
Layering
Integration
Criminal earns $1 million in cash from arms trafficking in U.S.
Cash smuggled across border, deposited in bank account
Money wired to account owned by anonymous shell company
Anonymous shell company buys real estate in U.S. for criminal

In the initial – or placement – stage of money laundering, the launderer introduces his illegal profits into the financial system. This might be done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (cheques, money orders, etc.) that are then collected and deposited into accounts at another location.

After the funds have entered the financial system, the second – or layering – stage takes place. In this phase, the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channelled through the purchase and sales of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not cooperate in anti-money laundering investigations. In some instances, the launderer might disguise the transfers as payments for goods or services, thus giving them a legitimate appearance.

Having successfully processed his criminal profits through the first two phases the launderer then moves them to the third stage – integration – in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.

TYPES, METHODS AND TECHNIQUES OF MONEY LAUNDERING

There are several methods that smugglers and money launderers use to perform the crime of money laundering without bringing it to the attention of any anti-money laundering authorities. The methods and techniques include:

1. Smurfing or Structuring

Often known as smurfing, is a method of placement whereby cash is broken into smaller deposits of money, used to defeat suspicion of money laundering and to avoid anti-money laundering reporting requirements. A sub-component of this is to use smaller amounts of cash to purchase bearer instruments, such as money orders, and then ultimately deposit those, again in small amounts.

2. Hundi

Hundi is a major channel of money laundering in Pakistan. Overseas nationals send remittances to their relatives and friends through Hundi. It works as a credit transfer or IOU, and transfers money without actually moving it from one region to another. You give the money to Hundi agent and they can provide you the similar amount in your destination country. Allegedly, some foreign exchange companies use this process to hide their taxable earnings from government.

3. Physical Bulk Cash Smuggling

Physical bulk cash smuggling involves transferring cash to another jurisdiction and depositing it in a financial institution, such as an offshore bank, with greater bank secrecy or less rigorous money laundering enforcement.

4. Cash-Intensive Businesses

In this method, a business typically expected to receive a large proportion of its revenue as cash uses its accounts to deposit criminally derived cash. Such enterprises often operate openly and in doing so generate cash revenue from incidental legitimate business in addition to the illicit cash. In such cases the business will usually claim all cash received as legitimate earnings. Service businesses are best suited to this method, as such enterprises have little or no variable costs and/or a large ratio between revenue and variable costs, which makes it difficult to detect discrepancies between revenues and costs. Examples are parking structures, strip clubs, tanning salons, car washes, arcades, bars, restaurants, and casinos.

5. Trade-based Money Laundering

Sophisticated criminal acts often use trade-based money laundering, which can also involve trade mis-invoicing, to move large quantities of illicit money between countries. By co-mingling the proceeds of crime with the proceeds of legitimate business, launderers are able to disguise the ultimate source of the illicit money. For example, in the Lebanese-Canadian Bank case, an international drug money laundering operation with ties to Hezbollah commingled the revenues from used car sales in Europe with cocaine sales in Africa.

This method is one of the newest and most complex forms of money laundering. This involves under- or over-valuing invoices to disguise the movement of money. For example, the art market has been accused of being an ideal vehicle for money laundering due to several unique aspects of art such as the subjective value of art works as well as the secrecy of auction houses about the identity of the buyer and seller.

6. Shell Companies and Trusts

Trusts and shell companies disguise the true owners of money. Trusts and corporate vehicles, depending on the jurisdiction, need not disclose their true owner. Sometimes referred to by the slang term rathole, though that term usually refers to a person acting as the fictitious owner rather than the business entity.

7. Round-tripping

Here, money is deposited in a controlled foreign corporation offshore, preferably in a tax haven where minimal records are kept, and then shipped back as a foreign direct investment, exempt from taxation. A variant on this is to transfer money to a law firm or similar organization as funds on account of fees, then to cancel the retainer and, when the money is remitted, represent the sums received from the lawyers as a legacy under a will or proceeds of litigation.

8. Bank Capture

In this case, money launderers or criminals buy a controlling interest in a bank, preferably in a jurisdiction with weak money laundering controls, and then move money through the bank without scrutiny.

9. Casinos

In this method, an individual walks into a casino and buys chips with illicit cash. The individual will then play for a relatively short time. When the person cashes in the chips, they will expect to take payment in a check, or at least get a receipt so they can claim the proceeds as gambling winnings.

10. Gambling

Money is spent on gambling, preferably on high odds games. One way to minimize risk with this method is to bet on every possible outcome of some event that has many possible outcomes, so no outcome(s) have short odds, and the bettor will lose only the vigorish and will have one or more winning bets that can be shown as the source of money. The losing bets will remain hidden.

11. Black Salaries

A company may have unregistered employees without written contracts and pay them cash salaries. Dirty money might be used to pay them.

12. Tax Amnesties

For example, those that legalize unreported assets and cash in tax havens.

13. Transaction Laundering

It happens when a merchant unknowingly processes illicit credit card transactions for another business. It is a growing problem and recognised as distinct from traditional money laundering in using the payments ecosystem to hide that the transaction even occurred (e.g. the use of fake front websites). Also known as "undisclosed aggregation" or "factoring".

14. Though Borders and Through Airports

Cash is smuggled across the borders of Iran and Afghanistan, as well as through airports. For this, smugglers try to evade the security checks to launder money and they also bribe authorities or someone in the surveillance team to let them move the cash abroad. FIA has recently taken strict legal and disciplinary action against its own staff for alleged involvement in currency smuggling.

15. Telegraphic Transfer (TT)

Telegraphic transfers work as follows: The sender ("the remitter") instructs his or her bank to send funds overseas to someone ("the beneficiary"). This can be done at a branch or by internet banking.

The remitting bank sends the funds to a bank it deals with in the destination country ("the correspondent bank"). If the beneficiary has an account at that bank, the funds are credited to his or her account and the transaction is complete.

If the beneficiary's accounts are at another bank, the funds are transferred again to that bank, at which point the transaction is complete. It is possible the funds will pass through two or more correspondent banks to get to the beneficiary's bank.

16. Digital Electronic Money

In theory, electronic money should provide as easy a method of transferring value without revealing identity as untracked banknotes, especially wire transfers involving anonymity-protecting numbered bank accounts. In practice, however, the record-keeping capabilities of Internet service providers and other network resource maintainers tend to frustrate that intention. While some crypto-currencies under recent development have aimed to provide for more possibilities of transaction anonymity for various reasons, the degree to which they succeed – and, in consequence, the degree to which they offer benefits for money laundering efforts – is controversial. Solutions such as ZCash and Monero are examples of crypto-currencies that provide unlinkable anonymity via proofs and/or obfuscation of information (ring signatures). Such currencies could find use in online illicit services.

In 2013, Jean-Loup Richet, a research fellow at ESSEC ISIS, surveyed new techniques that cybercriminals were using in a report written for the United Nations Office on Drugs and Crime. A common approach was to use a digital currency exchanger service which converted dollars into a digital currency called Liberty Reserve, and could be sent and received anonymously. The receiver could convert the Liberty Reserve currency back into cash for a small fee. In May 2013, the US authorities shut down Liberty Reserve charging its founder and various others with money laundering.

Another increasingly common way of laundering money is to use online gaming. In a growing number of online games, such as Second Life and World of Warcraft, it is possible to convert money into virtual goods, services, or virtual cash that can later be converted back into money.

The characteristics of Bitcoin – it is completely deterministic, protocol based and cannot be censored – make it possible to circumvent national laws using services like Tor to obfuscate transaction origins. Bitcoin relies completely on cryptography, not on a central entity running under a KYC framework. There are several cases in which criminals have cashed out a significant amount of Bitcoin after ransomware attacks, drug dealings, cyber fraud and gunrunning.

17. Reverse Money Laundering

Reverse money laundering is a process that disguises a legitimate source of funds that are to be used for illegal purposes. It is usually perpetrated for the purpose of financing terrorism but can be also used by criminal organizations that have invested in legal businesses and would like to withdraw legitimate funds from official circulation. Unaccounted cash received via disguising financial transactions is not included in official financial reporting and could be used to evade taxes, hand in bribes and pay "under-the-table" salaries. For example, in an affidavit filed on March 24, 2014 in United States District Court, Northern California, San Francisco Division, FBI special agent Emmanuel V. Pascau alleged that several people associated with the Chee Kung Tong organization, and California State Senator Leland Yee, engaged in reverse money laundering activities.

The problem of such fraudulent encashment practices (*obnalichka* in Russian) has become acute in Russia and other countries of the former Soviet Union. The Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG) reported that the Russian Federation, Ukraine, Turkey, Serbia, Kyrgyzstan, Uzbekistan, Armenia and Kazakhstan have encountered a substantial shrinkage of tax base and shifting money supply balance in favour of cash. These processes have complicated planning and management of the economy and contributed to the growth of the shadow economy.

18. Money Laundering through Prize Bond Draws

An ideal way for corrupt politicians, government officers and other criminals is to show their ill-gotten money as an outcome of prize bond draws. Another novel way to launder money is to convert Pakistani rupees received as bribe into foreign currency of higher value such as US dollars or euros. Nowadays, criminals use TV channels or other platforms to hold phony game shows or prize schemes to show their money as an outcome of the same. Phony NGOs are registered by criminals to show that either they collected funds through community participation, donations or simple fundraising.

19. Foreign Remittances

Foreign remittances and wire transfers are very safe instruments of laundering money due to the encouraging policies of government. Criminals often take advantage of tax amnesty schemes to legalise their unreported assets. Similarly, criminals show their illegal money as proceeds of income from businesses carried out in the tax-exempted areas such as the erstwhile FATA and PATA. The undocumented economy of Pakistan results in criminals declaring their illegal wealth as an outcome of some unregistered business such as businesses involving service provision. The Afghan transit trade is blamed as a source of money laundering for criminals. In one incident, expensive boating equipment meant for high seas were booked through this transit trade ignoring the fact that Afghanistan is a country without any sea.

Since Pakistan has almost nil agricultural tax on agricultural production, people claim huge sums of money as profits earned through such activities. Criminals show their illegal money as an outcome of sale proceeds of some antiques either discovered by them or received through inheritance. Pakistanis visit the shrines of holy saints and offer alms and other cash amounts as charity there. Except a few shrines under government control, all such shrines' income along with its source is not known.

CAUSES OF MONEY LAUNDERING

Several factors give rise to money laundering, and they may be present within a country or state, or might operate transnationally. Some of the most prominent factors that lead to money laundering include:

(a) Tax Evasion

Tax evasion leads to the hiding of financial assets owned by a person or company – to evade taxes, people hide their assets and the sources of their earnings. Generally, the rationale behind avoiding paying taxes is accumulating wealth. Moreover, some people do not give a portion of their wealth to the government, particularly if they feel that their tax money would not benefit their well-being or if they have no concern for the public good. This constitutes tax evasion if the transferred property is not shown on income tax returns and can lead to money laundering if the cash or property is transferred to foreigners' accounts surreptitiously.

(b) Weak Financial Regulations

Another cause of money laundering is the weakness and inadequacy of financial regulations and relevant authorities within a country. For instance, if the tax department is not strong enough to question the elites, and general public about their earnings and "monetary and non-monetary" assets, then it is not difficult for people to hide taxes and perform money laundering by buying property in relatively more stable but offshore economies.

(c) Bribery

Bribery is also linked to weak financial regulations as financial regulatory authorities or airport officials might be bribed by money launderers to allow them to transfer funds abroad without paying the applicable taxes and by not tracking down the sources or destinations of the money. This paves the way for secured money laundering facilitated by the officials of airport authorities.

(d) Corruption

Corruption is unethical conduct aimed at gaining personal benefits by using either authority or bribery. People hide the monetary and non-monetary assets that they earn illegitimately, i.e. through means of corruption. Hence, their corruption causes a flow of cash to foreign banks or causes them to hide their financial assets as well as the sources of earning, which leads to money laundering.

(e) Failure of Banks in Detecting Laundered Money

Another reason for the untracked facilitation of money laundering is the failure of banks to detect and report the money in their reserves that is being laundered. Huge sums of money are transferred by money launderers to foreign banks, and some accept without carrying out any effective inspection as to their source.

(f) Nature of Borders

Online financial transactions and the smuggling of cash through airports are not the only means of laundering money. Cash is also smuggled physically through borders, particularly in those countries where there is weak or no vigilance over cross-border trafficking. For instance, this practice is more common across the international borders of countries where the border area is either mountainous or too long to control and monitor strictly and continuously, e.g. across the Mexico-US border or the Pak-Afghan and Pak-Iran border.

IMPACT AND EFFECTS OF MONEY LAUNDERING

Money laundering affects the state as well as society. The economic and political influence of criminal organisations can weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of society. In countries transitioning to democratic systems, this criminal influence can undermine the transition. Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generated it. Laundering enables criminal activity to continue.

Economic Impacts

(a) Impact on Foreign Direct Investment

As with the damaged integrity of an individual financial institution, there is a damping effect on foreign direct investment when a country's commercial and financial sectors are perceived to be subject to the control and influence of organised crime. Fighting money laundering and terrorist financing is therefore a part of creating a business friendly environment which is a precondition for lasting economic development.

(b) Effects on Government's Economic Policies

Money laundering reduces the control of government over economic policy. It also raises the risk of the potential failure of banks, businesses, and government to implement economic policies. Furthermore, due to globalization, the impacts reach international monetary systems.

(c) Damage to the Private Sector

Damage to the private sector is another adverse effect that the money launderers cause to the economy of a nation. Money launderers often act through front companies, which acquire their funds. By acquiring large amounts of funds they can lower the prices of their services or products to a large extent to penetrate the market. They gain competitive advantage when other companies are not able to match their prices. Hence, intense competition can devastate existing small-and medium-sized private companies because smaller companies usually lack sufficient capital to bear the brunt of price competition.

(d) Decline in Tax Revenues

Money laundering directly affects the government's tax revenue. As a huge sum of currency that could have been taxed is moved abroad. This loss of revenue must be covered by the government by collecting more taxes from other taxpayers by increasing the tax rate. This hurts honest taxpayers, as well as making tax collection tougher for the government as the public may retaliate by protesting against the hike in tax rates.

(e) Effects on Financial and Banking System

The integrity of the banking and financial services marketplace depends heavily on the perception that it functions within a framework of high legal, professional and ethical standards. A reputation for integrity is the one of the most valuable assets of a financial institution.

Political Effects of Money Laundering

Money laundering has an impact on the political perception of the government since it gives a perception that the government is unable to control money laundering and other related white-collar crime. It also affects the reputation of a country at the international level if it appears that the financial institutions of that country might be involved in money laundering.

Social Impacts

Money laundering gives birth to a number of social costs and dilemmas. Furthermore, it can expose or encourage the people of a country to smuggling, drug trafficking, etc. Money laundering can also contribute to other crimes, as criminals, drug lords, smugglers, black money owners, etc. have to hide their source of income.

The possible social and political costs of money laundering, if left unchecked or dealt with ineffectively, are serious. Organised crime can infiltrate financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed governments.

As for the potential negative macro-economic consequences of unchecked money laundering, one can cite inexplicable changes in money demand, prudential risks to bank soundness, contamination effects on legal financial transactions, and increased volatility of international capital flows and exchange rates due to unanticipated cross-border asset transfers. Also, as it rewards corruption and crime, successful money laundering damages the integrity of the entire society and undermines democracy and the rule of the law.

MONEY LAUNDERING AND PAKISTAN

Money laundering has taken hold in Pakistan and around 10 billion dollars are laundered each year. This crime has flourished over the last three decades through black money, which the political and elite classes possess alongside having political influence and power in the country. Unfortunately, no government during this period has been successful in effectively implementing laws to curb money laundering and its precursor crimes, such as drug trafficking, smuggling, and corruption. Neither has the government devised any effective mechanisms to combat tax evasion. People try to evade taxes as tax laws are not strict enough to make them accountable for unpaid taxes. Although new laws have aimed at curbing money laundering, they have lost effectiveness as the government has never discouraged the patterns in society that facilitate money laundering.

THE CASE OF THE KHANANI AND KALIA FOREIGN EXCHANGE COMPANY

Javed Khanani and Munaf Kalia were arrested by the FIA in a dramatic raid in November 2008 when a complaint lodged against one of their franchises in Gujranwala led to the discovery of a parallel money transfer system being operated by their company – KKI – for purposes of transferring money out of the country through illegal *hundi/hawala* channels.

Their arrest sparked much commentary that their company was largely responsible for the massive flight of capital that took place from Pakistan in those days, putting serious pressure on the exchange rate and prompting an emergency appeal from the government to the International Monetary Fund.

Their company reportedly carried out 40% of all money exchange transactions in the country at the time, according to the FIA officials connected with the investigation quoted on record in the days after the arrest.

In January 2015, Javed Khanani was charged again by the FIA in a fresh *hundi/hawala* transaction discovered after all the original cases against them were finished. He was held briefly in custody, along with his manager, before being released on bail.

In November 2015, Interior Minister Chaudhry Nisar Ali Khan took notice of Altaf Khanani's arrest in the United States and ordered a re-inquiry into the whole case. No further developments have been reported on that front.

THE CASH SMUGGLING CASE OF AYAN ALI

The Pakistani model Ayan Ali was arrested at Islamabad Airport when US $506,000 were found in her bag, which she was reported to be taking to Dubai. This amount is far higher than the maximum cash limit allowed to be taken out of Pakistan, which was set at $10,000 and $60,000 a year. The amount that Ayan Ali had was ten times higher than that. Legal action was taken against Ali, who was immediately sent to Adiala Jail. Investigations were also held; however, Ayan Ali was granted bail later on. As a punishment, her name was also added to the exit control list to prevent her from travelling again outside the country.

CONTROLLING MONEY LAUNDERING

Anti-Money Laundering Legislation in Pakistan

In Pakistan, the most prominent legislation made so far against money laundering includes the following:

- Anti-Money Laundering Ordinance, 2007
- Anti-Money Laundering Act, 2010
- Anti-Money Laundering Rules, 2010 along with Amendments to the Anti-Money Laundering Act, 2010
- Anti-Money Laundering Regulations, 2010

Being a member of the Asia/Pacific Group on Money Laundering ('APG') since May 2000, it was mandatory for Pakistan to frame an anti-money laundering legislation based on international standards. The first specific law in this regard was the Anti-Money Laundering Ordinance ('AMLO') promulgated in 2007, which suffered from various flaws. The scope of the AMLO was limited to account transactions and suspicious transaction reports (STRs) were restricted to only banking accounts. The offence of money laundering was made non-cognizable and a small number of predicate offences were included in the schedule of the AMLO.

The AMLO was reframed via the Anti-Money Laundering Act, 2010 ('AMLA') and various changes were incorporated in it, including a well-built preamble and a thorough definition of money laundering. The feature of combating terrorist financing is also included in the preamble. In addition to this, details have been provided for the attachment and forfeiture of properties, either obtained from proceeds of crime or involved in money laundering. The Act also provides a definition, albeit a broad one, as to what constitutes as a financing institution. Despite these several changes in the AMLA, the Act is laced with several loopholes and errors that need to be addressed.

LEGAL OFFENCE OF MONEY LAUNDERING

Section 4 of the AMLA provides punishment for money laundering offence as a rigorous imprisonment from one to ten years. Moreover, section 21 (a) of the AMLA states that each crime punished under it shall be non-cognizable. In a cognizable offence, the police or the designated officer of the investigating agency has the authority to arrest the accused without having obtained a warrant or permission of the court. Cognizable offences are serious and heinous in nature and have minimum punishment of three years. Non-cognizable offences, on the other hand, are not serious and heinous in nature as compared to cognizable offences and have maximum punishment up to less than three years.

This drawback of the AMLA has serious consequences. It renders the alleged offence of money laundering as a lenient one and the accused is given a benefit in this case. The investigating officer cannot arrest a culprit without the permission of the court. In Pakistan, the minimum punishment for the offence of money laundering is one year. However, in India, as per section 4 of the PMLA, the penalty for money laundering entails a rigorous imprisonment for a term not less than three years and up to seven years. In Bangladesh, the punishment provided for money laundering crime in section 4 of the Money Laundering Prevention Act, 2012 (MLPA 2012) is a sentence of four to twelve years of rigorous imprisonment. In Sri Lanka, the punishment of money laundering is a rigorous imprisonment from five to twenty years, as established under section 3 (1) (b) of the Prevention of Money Laundering Act, 2006 (PMLA 2006).

If the aim is to achieve international standards, it may be safe to state that the nature and punishment of money laundering provided in the AMLA is not at par with the required global standards. Worldwide, the offences of money laundering and its underlying offences, i.e. predicate offences, are considered as serious offences. However, in Pakistan, the predicate offence under the AMLA have stricter punishments than that of the offence of money laundering. In this sense, this crime is not considered as a serious offence as its punishment is not as severe as other offences. The threshold of punishment provided for serious and cognizable offences in Pakistan does not even match with the serious offence of money laundering under the AMLA.

There is also another way of analyzing the entire situation. Financial, corporate, and fiscal offences in Pakistan include fraud, embezzlement, counterfeiting currency, illegal forex businesses, etc. These offences are dealt with by the relevant provisions of Pakistan Penal Code, 1860. The punishments of above offences provided in these criminal instruments are although different yet quite similar in magnitude. The punishment of imprisonment of the money laundering offence under the AMLA is relatively lesser than the punishments provided for the serious financial, corporate, and fiscal offences under the relevant special laws of Pakistan.

Most of these offences are cognizable in nature, which shows that their prevention is considered more gravely by increasing the magnitude and length of rigorous imprisonment for such offences. However, this has not been done in case of the AMLA, which not only halted the prevention of money laundering crime but also jeopardized enforcing this enactment as there are no powers of the investigating officers to arrest due to the offence being a non-cognizable one. Due to this defect, the feature of the AMLA that an offender can be punished in two offences, i.e. in money laundering as well as in predicate offence, bears minimal effect.

INSTITUTIONS AND AGENCIES TO CONTROL MONEY LAUNDERING IN PAKISTAN

NATIONAL EXECUTIVE COMMITTEE (NEC) AND NCC

The NEC is high level body established to oversee both policy and implementation matters of the Anti-Money Laundering and Counter Financing of Terrorism regime.

Other members of the NCC are three senior officials from the military's General Headquarters (GHQ), secretaries of foreign affairs, interior and finance, besides heads of all institutions and regulatory bodies related to money laundering and terror financing. They include the governor of the State Bank of Pakistan (SBP), chairman of Securities and Exchange Commission of Pakistan (SECP), director general of the Federal Investigation Agency (FIA), member (customs) of the Federal Board of Revenue (FBR) and DG of the Financial Monitoring Unit (FMU).

Military officers in the two highly sensitive positions — director general Military Operations (DGMO) and a director general of the Inter-Services Intelligence (ISI) — may become part of the National Executive Committee (NEC) on terror-financing and money laundering

Initially, three agencies, the National Accountability Bureau (NAB), the Federal Investigation Agency (FIA), and the Anti-Narcotics Force ('ANF') were empowered to investigate and prosecute revenant parties under section 2 (j) of the AMLA. Afterwards, the Directorate General (Intelligence and Investigation Inland Revenue) Federal Board of Revenue ('FBR') was also included as one well via a notification by Ministry of Finance and Revenue dated August 24, 2010.

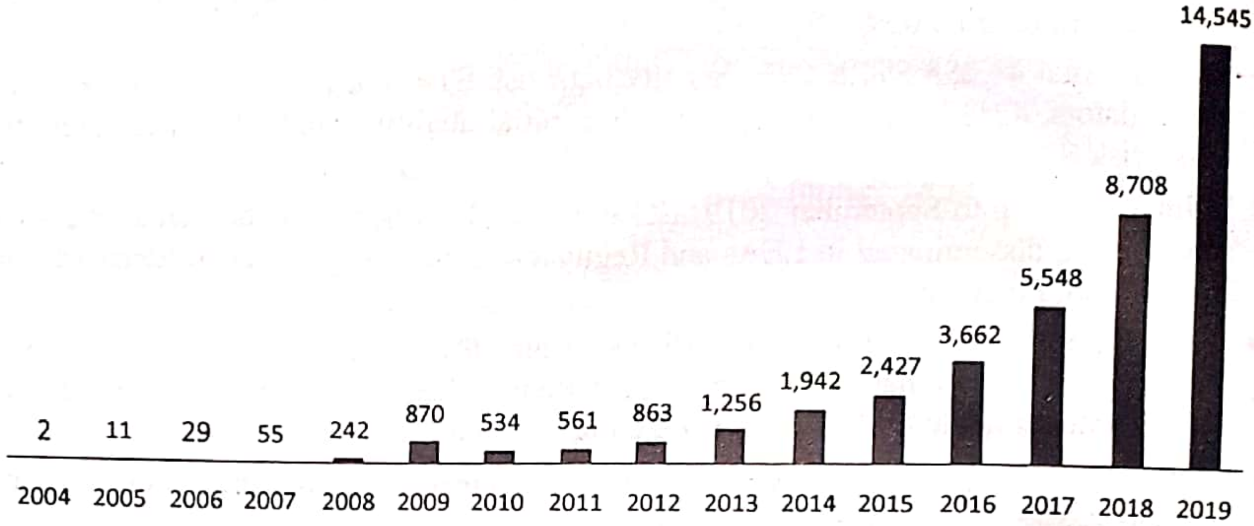
PERFORMANCE OF FINANCIAL MONITORING UNIT (FMU) OF PAKISTAN

- 41,255 suspicious transaction reports (STRs) have been received by FMU since inception till September 30, 2019.
- Out of total 41,255 STRs, 22% (mostly high risk STRs) have been disseminated to LEAs / Regulators, 42% have been recorded after initial analysis while 36% were identified to be low risk STRs.
- Since 2015 up to September 2019, 125 Financial Intelligences (FIs) containing 4,647 STRs have been disseminated to LEAs and Regulators under the Predicate Offence of Terrorism / Terrorism Financing.
- Top three suspected Predicate Offences from 2015 up to September 2019 in terms of number of disseminated STRs are Tax Crimes (STRs disseminated = 1,650), Corruption (STRs disseminated = 897) and Smuggling (STRs disseminated = 328).
- Major reporting sectors are commercial banks followed by exchange companies and micro finance banks.
- Top three STR reporting districts from 2015 to September, 2019 are Karachi, Lahore and Islamabad with 9,214; 7,687 and 2,496 reported STRs, respectively.
- 5,114,604 Currency Transaction Reports (CTRs) have been received since inception till September 30, 2019.

Year Wise STRs Received (Since Inception) As on 30.09.2019

Year	STRs Received
2004	2
2005	11
2006	29
2007	55
2008	242
2009	870
2010	534
2011	561
2012	863
2013	1,256
2014	1,942
2015	2,427
2016	3,662
2017	5,548
2018	8,708
2019	14,545
Total	**41,255**

STRs Received by FMU since 2004



STRs Status (Since Inception) As on 30.09.2019

Total STRs		**41,255**
Low Risk STRs	**14,689**	**35.61%**
STRs Recorded after Analysis	**17,530**	**42.49%**
Disseminated	**9,036**	**21.90%**
LEAs	7,176	79%
Regulators	1,860	21%

NATIONAL ACCOUNTABILITY BUREAU (NAB)

The National Accountability Bureau, set up under the NAB Ordinance, exercises jurisdiction all over Pakistan, both at the federal and provincial level. However, one blatant flaw is that the Bureau has no power to investigate and prosecute cases concerning terrorist financing and this is because the schedule of the Ordinance fails to include it as an offence.

There are three main aims of the Anti-Money Laundering Act, provided in the introduction - prevention of money laundering, fighting terrorist financing, and forfeiture of the assets derived from such activities. The offences enlisted in the schedule of the AMLA also include offences enlisted under the ATA. However, NAB being an investigating and prosecuting agency has no authority to investigate and prosecute terrorist financing.

FEDERAL INVESTIGATION AGENCY (FIA)

The second agency declared as investigating and prosecuting agency under the Anti-Money Laundering Act is the FIA. As per the preamble of the FIA Act 1974, the scope of the FIA is only limited to the investigation of various crimes committed in connection with the matters related to the federal government. Thus, the FIA cannot operate at the provincial level and cannot deal with the offences committed solely by private persons. This is problematic as it hinders cooperation between the investigating agencies due to conflicting jurisdictions.

However, the FIA can only deal with those terrorist financing cases which have an inter-provincial scope or are assigned by the Federal Government. This results in another impediment simply because the FIA has not been empowered enough to take necessary action. Such a contradiction should have been addressed before the FIA was made an investigating and prosecuting agency.

The Anti-Narcotic Force (ANF)

The ANF is another investigating and prosecuting agency for enforcement of the Anti-Money Laundering Act. However, the preamble of the Control of Narcotics Substances Act, 1997, is confined to controlling narcotic drugs, psychotropic items, and their allied matters, therefore its entire role is regarding the control of narcotics. Its inclusion as an investigation agency is, therefore, pointless.

Federal Bureau of Revenue (FBR)

Another enforcement agency that is responsible for dealing with money laundering is Directorate General (Intelligence and Investigation Inland Revenue) FBR. This agency has the power to investigate and prosecute the cases under the Anti-Money Laundering Act wherever earnings of crimes are accumulated under the offences committed under the Customs Act, 1969.

One of the main issues that is affecting the practical implementation of the AMLA is the absence of a Joint Task Force. It further raises concerns regarding the approach the legislature has adopted in dealing with money laundering. The main problem is that all of the four agencies are working in their own sphere resulting in a complete lack of cooperation. This leads to a failure in curbing the offences of money laundering and terrorist financing. It is, therefore, recommended that, one specialized agency instead of four separate ones may serve better or a Joint Task Force of these agencies can also produce improved results.

Critical Analysis of Performance of Institutions

Although the four designated investigating and prosecuting agencies are working in their respective ambit under the AMLA, each agency is confined within a narrow scope of jurisdiction. By following the international standards set by other countries, it can be stated that the formation of a Joint Task Force or one specialized agency is indeed required in order to tackle these offences more effectively. This task force should consist of different stakeholders and regulatory authorities, i.e. customs, FIU, investigating agency, or police is also helpful for fighting these crimes, as all are intrinsically linked to each other.

Money Laundering and Terrorism Financing

All the money that the terrorists receive is actually “laundered” money, because it is kept hidden and neither its original source nor its destination are revealed to the government by the financers. Hiding the source and channels of money is essential for the terrorists to continue financing their activities without being traced by local law enforcement agencies. Hence, money laundering goes hand-in-hand with terrorist activities.

Terrorists require money to finance their activities. The sponsorship is provided by their patrons, who are usually found to be money launderers and drug traffickers, and sometimes politicians and the elite of society, who support them in a disguised manner. Nonetheless, funding from foreign anti-state elements overshadows all other sources of terrorists funding, which establishes the pathways of money laundering. Terrorist organizations have been found to be involved in money laundering. This has been found to be true particularly in Pakistan, where foreign intelligence agencies, namely RAW, Mossad, and the CIA, have been found to be involved with terrorists and to have financed anti-state elements.

For instance, the recent incident of arrest of an Indian army intelligence officer, Kalbhushan Yadav, who was found to be commanding a strong terrorist network in Pakistan, is a clear instance of the Indian Army RAW's involvement in funding anti-state terrorist activities, which were pursued by Kalbhushan Yadav's network in different areas of Pakistan, particularly Quetta and Karachi.

FINANCIAL ACTION TASK FORCE (FATF)

In response to mounting concern over money laundering, the Financial Action Task Force (FATF) on money laundering was established by the G-7 Summit in Paris in 1989 to develop a co-ordinated international response. One of the first tasks of the FATF was to develop recommendations, 40 in all, which set out the measures national governments should take to implement effective anti-money laundering programmes.

The FATF Recommends That

Countries should criminalise terrorist financing on the basis of the Terrorist Financing Convention, and should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts. Countries should ensure that such offences are designated as money laundering predicate offences.

The FATF is a policy-making body and has no investigative authority. In respect to investigating a company and persons involved in money laundering, individuals need to contact their local investigative authorities. Till January 2020, 39 countries were members of FATF. The main purpose of FATF is to devise an intergovernmental response for curbing money laundering; however, in October 2001, after 9/11, it took on another essential goal in order to accomplish the combating the financing of terrorism. It creates policies and strategies and gives advice to the governments for anti-money laundering. and Combating Financing Terrorism laws and policy reforms. It can also suggest financial sanctions against countries that do not obey international regulations and policies.

FATF AND PAKISTAN

Pakistan is currently being monitored at three different but interlinked levels – APG, the United States and the FATF – that would determine the country's possible exit from the FATF grey list.

FATF has formulated a wide range of recommendations for fighting the money laundering and terrorist financing. The guidelines of FATF are considered binding upon its member countries. Recommendation 27 urges member countries to empower and facilitate investigating authorities in combating money laundering as well as terrorist financing.

Money laundering is a complex type of a white-collar crime. It has far-reaching negative effects upon the economy of any country. FATF being watchdog of governments' financial activities to track any misappropriation related to money laundering regulations included Pakistan in its 'grey list' in June 2018.

The global standards set by the international community concerning the curbing of money laundering are also converse to the AMLA 2010. The first two recommendations by the FATF deal with the extent of money laundering crime. These suggestions urge member countries to criminalize money laundering crime according to the international guidelines discussed in the various instruments of the United Nations.

FATF'S RECOMMENDATIONS FOR PAKISTAN

FATF has demanded Pakistan to take multiple actions to improve its performance regarding controlling money laundering. Pakistan needs to consider ways to curb money laundering and terrorism financing. Some of the recommendations include:

- Show that terrorism financing risks are properly identified and assessed and that supervision is applied on a risk-sensitive basis.
- Show that remedial action and sanctions are applied in cases of money laundering and terrorism financing and that financial institutions (like banks) are complying with this action.
- Demonstrate that the authorities are cooperating and identifying and taking action against illegal money or value transfer services.
- Show that authorities are identifying cash couriers (like those involved in the *hawala* and *hundi* system) and enforcing controls on illicit movement of currency.
- Improve inter-agency coordination, including between provincial and federal authorities.
- Demonstrate that law enforcement agencies are identifying and investigating the widest range of terrorism financing activities and that investigations and prosecutions target designated persons and entities as well as persons and entities acting on their behalf.
- Show that terrorism financing prosecutions result in effective, proportionate and dissuasive sanctions and enhancing the capacity and support for prosecutors and the judiciary.
- Demonstrate implementation of targeted financial sanctions against all designated terrorists and those acting on their behalf.
- Demonstrate enforcement against violations including administrative and criminal penalties and provincial and federal authorities cooperating on enforcement cases
- Demonstrate that facilities and services owned or controlled by designated person are deprived of their resources and the use of the resources

The FATF placed Pakistan on its grey list in June 2018 for not doing enough to fight money laundering and terrorism financing. Pakistan is having discussion and reviews with the FATF to get off the grey list and avoid being placed on the black list.

Pakistan has engaged technical assistance providers as consultants in key institutions such as the FBR, SECP, FMU and SBP with the support of the International Monetary Fund (IMF) and the World Bank to complete the action plan and further strengthen the effectiveness of the AML/CFT regime.

Prime Minister Imran Khan reportedly approved a new strategy for the implementation of 27 conditions of the Paris-based Financial Action Task Force (FATF) to get Pakistan out of its grey list and the inclusion of top ranking military officials and federal minister for economic affairs division in NEC is a part of the strategy.

ASIA/PACIFIC GROUP (APG) ON MONEY LAUNDERING

Pakistan is a member of the Asia/Pacific Group on Money Laundering. The purpose of the Asia/Pacific Group on Money Laundering (APG) is to ensure the adoption, implementation and enforcement of internationally accepted anti-money laundering and counter-terrorist financing standards as set out in the FATF Forty Recommendations and FATF Eight Special Recommendations.

The effort includes assisting countries and territories of the region in enacting laws to deal with the proceeds of crime, mutual legal assistance, confiscation, forfeiture and extradition; providing guidance in setting up systems for reporting and investigating suspicious transactions and helping in the establishment of financial intelligence units. The APG also enables regional factors to be taken into account in the implementation of anti-money laundering measures.

The origins of the APG go back to "awareness raising" activities undertaken by the FATF in the early 1990s as part of its strategy to encourage adoption of money laundering counter measures throughout the world. In order to achieve more concrete results, Australia agreed to set up a Secretariat for the purpose of obtaining regional commitment and establishing a regional FATF-style body with practical objectives. Subsequently, an agreement was reached in Bangkok in 1997 which created the APG. The first meeting was held in Tokyo in 1998 and then annually thereafter.

Following the events of 11 September 2001, the APG expanded its scope to include the countering of terrorist financing. The APG conducts mutual evaluations of its members and holds a periodic workshop on money laundering methods and trends. Its work mandate has been set out in a document containing specific terms of reference for the group.

The APG is supported by a Secretariat, which serves as the focal point for its activities. The APG became an Associate Member of the FATF in 2006.

UNITED NATIONS OFFICE ON DRUGS AND CRIME

The United Nations Office on Drugs and Crime (UNODC) maintains up-to-date data related to drug trafficking, smuggling, money laundering, and terrorism financing. It was founded in 1997 to create a combined mechanism to curb money laundering and the illegal trafficking of drugs. It also offers technical and financial assistance to governments to devise effective mechanisms for curbing money laundering.

Fighting Money Laundering Helps Fighting other Crimes

(a) Money laundering is a threat to the good functioning of a financial system; however, it can also be the Achilles heel of criminal activity.

(b) When criminal funds are derived from robbery, extortion, embezzlement or fraud, a money laundering investigation is frequently the only way to locate the stolen funds and restore them to the victims. Most importantly, however, targeting the money laundering aspect of criminal activity and depriving the criminal of his ill-gotten gains means hitting him where he is vulnerable. Without a usable profit, the criminal activity will not continue.

(c) Most nations, including Pakistan, need to take serious but focused action immediately so as to rid this disease from and within society, particularly if the money laundering is widespread there. It is also notable to mention here that the curbing of money laundering will also cause a demise in other relevant criminal activities – for instance, drug trafficking, smuggling, and the financing of terrorism – because all of these crimes are financed by money laundering activities.

To control the crime of money laundering from society, there are multiple options – for instance,

- Anti-money laundering legislation
- Judicious implementation of laws
- Efficient and speedy investigation
- Strengthening the rule of law

- Creation and collaboration of anti-money laundering agencies at the national and international levels
- Strict security at airports and borders
- Enhanced accountability of elites
- Strict implementation of tax laws

WAY FORWARD/SUGGESTIONS/RECOMMENDATIONS

1. There is need to update anti-money laundering legislation for strengthening the rule of law.
2. There should also be judicious implementation of existing laws with efficient and speedy investigation.
3. Law enforcement agencies like FIA and NAB need to devise effective strategies and mechanisms to increase cooperation at the domestic, regional, and international level to keep track of the activities that are directly or indirectly linked to money laundering.
4. A continual and strict security on porous international borders and at airports will prevent smugglers and money launderers from moving cash from one region to another.
5. Furthermore, by keeping a strict check on wire transfers and other methods of currency transfers, financial institutions can also play their role in tracking laundered money as well as the sources of the money, and consequently report any suspicious money transfer to the security agencies.
6. In addition, tax authorities such as FBR need to devise thorough and investigative auditing strategies in order to keep track of elites' incomes, so that no one can launder cash to avoid taxes. For this purpose, tax revenue departments should also be made independent and sufficiently powerful so that they may not be bribed or influenced politically by any powerful elite.
7. Furthermore, corruption and bribery are other problems that accompany money laundering, because a corrupt person will prefer to hide money acquired through bribes or corruption to avoid being tracked and penalized by law enforcement authorities.
8. Controlling Money Laundering demands Expertise and Consistency: Money launderers have shown themselves through time to be extremely imaginative in creating new schemes to circumvent a particular government's countermeasures. A national system must be flexible enough to be able to detect and respond to new money laundering schemes.
9. Anti-money laundering measures often force launderers to move to parts of the economy with weak or ineffective measures to deal with the problem. Again, a national system must be flexible enough to be able to extend countermeasures to new areas of its own economy. Finally, national governments need to work with other jurisdictions to ensure that launderers are not able to continue to operate merely by moving to another location in which money laundering is tolerated.
10. Multilateral Initiatives: Large-scale money laundering schemes invariably contain cross-border elements. Since money laundering is an international problem, international co-operation is a critical necessity in the fight against it. A number of initiatives have been established for dealing with the problem at the international level.
11. International organisations, such as the United Nations or the Bank for International Settlements, took some initial steps at the end of the 1980s to address the problem. Following the creation of the FATF in 1989, regional groupings – the European Union, Council of Europe, Organisation of American States, to name just a few – established

anti-money laundering standards for their member countries. The Caribbean, Asia, Europe and southern Africa have created regional anti-money laundering task force-like organisations, and similar groupings are planned for western Africa and Latin America in the coming years.

CONCLUSION

Money laundering causes negative effects to the economy, such as devaluing capital, lowering the growth rate, affecting interest rates and the CPI, causing inflation, and defaming financial institutions, which leads to cutting opportunities for domestic and foreign direct investment.

Curbing of money laundering will cause a major decline in other criminal activities such as drug trafficking and terrorist financing. To end this menace, strong legislation, strengthening the rule of law, close liaison of anti-money laundering agencies at the national and international levels, effective monitoring at borders, and strict accountability of politicians and the elites is required.

QUESTION 20

CYBERCRIME

Q. Cybercrime is increasing at national and international levels. Suggest some measures to control this kind of crime. (CSS-2019)

Q. Write a detailed not on Cybercrime. (CSS-2016)

Q. Define Cybercrime and explain its types. What are the problems being faced by FIA in controlling cybercrime in Pakistan?

ANSWER

INTRODUCTION

Cyber Crime is any criminal activity committed on internet via computer, cell phones, digital devices and networks. It can include the distant theft of information belonging to an individual, government or corporate sector through criminal tress-passing into unauthorized cyber systems around the world. It includes from stealing millions of rupees from online bank to harassing and stalking cyber and internet users.

CAUSES OF CYBERCRIME

In the past people used to own *physical properties* only. But the advent and widespread usage of internet has given birth to the *ownership of ideas* like Facebook, Twitter, WhatsApp, Instagram, Google, YouTube, Yahoo and so many other social and financial networks. When there is so much social and financial activity online, this also increases chances of cyber-crime.

The spread and development of information and communications technologies has led to new and emerging forms of crime, including technically sophisticated and complicated cybercrimes. Offences that were historically committed in person are now committed by using the Internet, and the damage caused by cybercrime continues to expand. Moreover, cybercrimes are easily committed beyond national borders. In order to effectively investigate, prosecute and adjudicate cybercrime cases, it is indispensable to strengthen the capacity of criminal justice personnel and to facilitate broad cooperation with the private sector, which has great knowledge in this field, and also with investigative and prosecutorial agencies in other countries.

Cybercrime also includes sending viruses on different systems, or posting defamation messages. Commission of cyber-crime can be:

1. Cybercrime has now surpassed illegal drug trafficking as a criminal moneymaker.
2. Somebody's identity is stolen every three seconds as a result of cybercrime.
3. Without a sophisticated security package, your unprotected PC can become infected within four minutes of connecting to the Internet.

WHERE DO PEOPLE LEARN TO COMMIT CYBERCRIME?

The Internet provides a place for cyber-criminal communities to exist and flourish. Sites like Dark Web and others provide people with opportunities of committing crime. The communities may be seen as subcultures. To be clear, a subculture maintains its own values, beliefs, and traditions that differ from the dominant culture. Some subcultures may be based on ethnic groups, religious sects or delinquent gangs.

Subcultures also exist on the Internet or the cyber environment. For instance, subcultures embrace some of the individuals that seek to understand computer operating systems (i.e. hackers), individuals that seek to destroy or do harm within a computer system (i.e. crackers), or individuals that seek to steal telephone services (i.e. phreakers).

Other deviants or criminals may also be part of an online subculture (e.g. pedophiles, depressives, anorectics). Cybercrime communities function as the venue where the criminal activity is reinforced and encouraged. The cybercrime communities provide an opportunity for transmittal of knowledge that make the criminal behaviour more easy and effective. People participating in these subcultures learn techniques of committing cybercrimes.

The cybercrime communities provide an opportunity for individuals to be in touch with others from different geographical locations. Thus, someone sitting in the Pakistan can participate in a community in Russia and Mexico.

MAJOR ONLINE ACTIVITIES

1. Social networking: more than 1.5 billion people log into Facebook at least once a day.
2. Online banking
3. Internet surfing
4. Audio & video communication
5. Online Entertainment
6. Online shopping
7. Map directions/GPS
8. Online auction
9. Information sharing
10. Medical assistance
11. Online games

TYPES AND CATEGORIES OF CYBERCRIME

There are following types and categories of cybercrime:

1. Hacking

Trying to get into computer systems in order to steal, corrupt, or illegitimately view data. Hacking comes from the term "hacker", who is an expert in computer programming languages and systems; Hacking, in this sense, means using unusually complex and clever methods to make computers do things. For some time, however, the popular press has used the word "hacker" and "hacking" in a negative way to refer to individuals who try to get into computer systems in order to steal, corrupt, or illegitimately view data. Hackers themselves maintain that the proper term for such individuals is "cracker", and that their activities should be called cracking. However, in order to be consistent with the most common usage of the word, we use "hacking" here to refer to unauthorized access.

2. Identity Theft

According to some criminologists, identity theft or cyber fraud is the most important criminal activity of this millennium. Identity theft refers to a crime where an individual maliciously obtains and uses another individual's personal/sensitive information to commit frauds/scams by using the stolen identity. Mostly this crime is committed for economic gain. The cyber-criminal gains access to an individual's information by stealing e-mail details, stored information on computer databases, they eavesdrop over the networks to get hold of transactions. Identity thefts include but not limited to shoulder surfing, dumpster diving, spamming, spoofing, phishing, and skimming. National Response Centre for Cybercrime (NR3C) has successfully investigated numerous cases of identity theft.

3. Cyber Fraud

According to some criminologists, identity theft or cyber fraud is the most important criminal activity of this millennium. Identity theft is unauthorized use of someone else's personal information for criminal activity. It is using someone's personally identifying information like name, social security number, or credit card number without permission to commit fraud or other crimes.

Methods for identity theft generally include hacking, phishing and pharming. *Hacking* is breaking into network databases via the internet to obtain personal or other classified information. *Phishing* is when a criminal goes online and pretends as a corporation like Western Union or Amazon or Daraaz.com and asks for personal information. Phishing schemes also include travel scams, stock frauds, monetary transfers, non-delivery of merchandise, internet auction fraud, credit card fraud and so forth. An emerging form of identity theft is *pharming*, which is when a hacker redirects an individual from a legitimate site to a fraudulent site without the user's knowledge.

Cyber fraud or identity theft is costly not only for the victim but also for the national economy because people lose their money to criminals and that money then disappears into the black economy.

4. Financial Fraud

Financial fraud is a criminal behaviour in which a person uses wrong methods to trick a victim out of his money. The Internet fraud scheme is a common example of financial fraud, which includes emulated online sales, retail schemes, business opportunity schemes, identity theft, market manipulation schemes, and credit card schemes.

5. Computer Viruses and Worms

A virus is a malicious programme that passes from one computer to another in the same way as a biological virus passes from one person to another. Most viruses are written with a malicious intent, so that they may cause damage to programmes and data in addition to spreading themselves. Viruses infect existing programmes to alter the behaviour of programmes, actively destroy data, and perform actions to storage devices that render their stored data inaccessible.

A worm is a software programme that uses computer networks and security holes to replicate itself from one computer to another. It usually performs malicious actions, such as using the resources of computers as well as shutting down the computers.

6. Website Defacement

Website defacement is an attack on a website that changes the visual appearance of the site or a webpage. This is typically the work of system crackers, who break into a web server and replace the hosted website with one of its own. The most common method of defacement is using SQL Injections to log on to administrator accounts. Defacements usually consist of an entire page. This page usually includes the defacer's pseudonym or "Hacking Code-name." Sometimes, the Website Defacer makes fun of the system administrator for failing to maintain server security. Most times, the defacement is harmless, however, sometimes it can be used as a distraction to cover up more sinister actions such as uploading malware or deleting essential files from the server. National Response Centre for Cybercrime (NR3C) has successfully investigated cases relating to website defacement.

7. Cyber Bullying and Cyber Stalking

Cyber-bullying or cyber-harassment is a form of bullying or harassment using electronic means. Cyber stalking (also called cyber harassment) is when someone uses the Internet to threaten or make unwanted advances towards someone else. This sort of harassment can cause physical, emotional, and psychological damage to the victim. Children are particularly vulnerable because of their trusting nature and give away their personal information. This information later is used against them for stalking purpose, therefore the National Response Centre for Cybercrime (NR3C) officials advice that until the person is not a trusted individual, no information should be shared over the internet. Children are particularly vulnerable because of their trusting nature.

8. Child Pornography

The Internet evolution has made children a viable victim to the cybercrime. As more homes have access to Internet, children use the internet and chances have increased where they can fall victim to the aggression of pedophiles. The easy access to pornographic contents available over the internet lowers the inhibition of the children. Pedophiles lure the children by distributing pornographic material, and try to meet them for sexual activities which also include collection of their explicit photographs and videos. Mostly pedophiles try to contact children in chat rooms posing as teenagers, and start to befriend them to win their confidence.

Each year, countless children around the world fall prey to sexual predators. These young victims are left with permanent psychological, physical, and emotional scars. When a recording of that sexual abuse is made or released onto the Internet, it lives on forever. It haunts the children depicted in it, who live daily with the knowledge that countless strangers use an image of their worst experiences for their own gratification. National Response Centre for Cybercrime (NR3C), cybercrime unit has zero tolerance for pedophiles, and is driven to make cyber space a safe place for our children.

9. Social Engineering

Social engineering is a technique used by cyber criminals to get access to confidential information. With social engineering, attackers use manipulation and deceit to trick victims into giving out confidential information. Some of the social engineering methods used by attackers:

(a) Sending messages that contain dangerous attachments (e.g. malware) with text that encourage people to open the attachments.

(b) Pretending to be the main administrator of a local network and asking for the victim's password in order to perform a maintenance check.

(c) Telling a victim over the phone that he/she has won a prize, in return they ask for a credit card number to deliver it.

(d) Asking for a user's password for a certain Internet service, such as a blog, and later use the same password to access user's computer. This technique works because users often use the same passwords for many different portals.

10. Digital Cybercrime Markets

Several cybercrime markets are operating over the Internet. One of the most pervasive forms of cybercrime is digital piracy. Digital piracy is defined as the illegal act of copying digital goods, software, digital documents, digital audio and video without explicit permission and compensation to the copyright holder.

11. Data Theft

Data theft is the act of stealing computer-based information from an unknowing victim with the intent of compromising privacy or obtaining confidential information. Data theft is increasingly a problem for individual computer users, as well as big corporate firms. The following categories are most common in data theft cases:

(a) **E-commerce:** You should make sure that your data is safe from prying eyes when you sell or buy things on the Web. Carelessness can lead to leaking your private account information.

(b) **Password cracking:** Intruders can access your machine and get valuable data if it is not password-protected or its password can be easily decoded (weak password).

(c) **Eavesdropping:** Data sent on insecure lines can be wiretapped and recorded. If no encryption mechanism is used, there is a good chance of losing your password and other private information to the eavesdropper.

(d) **Laptop theft:** Increasingly incidents of laptop theft from corporate firms occur with the valuable information stored in the laptop being sold to competitors. Carelessness and lack of laptop data encryption can lead to major losses for the firm.

12. Intellectual Property Rights

Intellectual property rights is concerned with any act that allows access to patent, trade secrets, customer data, sales trends, and any confidential information.

13. Denial-of-Service Attack

A Denial-of-Service (DoS) attack is mounted with the objective of causing a negative impact on the performance of a computer or network. It is also known as a network saturation attack or bandwidth consumption attack. Attackers perform DoS attacks by sending a large number of protocol packets to the network.

CRIMINAL JUSTICE RESPONSE TO CYBERCRIME IN PAKISTAN

National Response Centre for Cybercrime (NR3C)

National Response Centre for Cyber Crime (NR3C) – FIA is a law enforcement agency dedicated to fight cybercrime. A law enforcement agency that combats Cybercrime, provides state of the art digital forensic services, enjoys the respect in the society for its integrity, professional competence, impartial attitude and serves as a role model for provincial police forces.

Inception of this Hi-Tech crime fighting unit transpired in 2007 to identify and curb the phenomenon of technological abuse in society.

National Response Centre for Cyber Crime (NR3C), is the latest introduction to mandate of the FIA, primarily to deal with technology based crimes in Pakistan. It is the only unit of its kind in the country and in addition to the directly received complaints also assists other law enforcement agencies in their own cases.

NR3C has expertise in Digital Forensics, Technical Investigation, Information System Security Audits, Penetration Testing and Trainings. The unit since its inception has been involved in capacity building of the officers of police, intelligence, judiciary, prosecutors and other government organizations. NR3C has also conducted a large number of seminars, workshops and training/awareness programmes for the academia, print/electronic media and lawyers. Cyber Scouts is the latest initiative of NR3C, in which, selected students of different private/public schools are trained to deal with computer emergencies and spreading awareness amongst their fellow students, teachers and parents.

NR3C FUNCTIONS AND ACTIVITIES

1. Computer Forensics

In today's ever changing criminal world the use of computers for fraud and the pursuit of other crimes has increased to dramatic proportions. NR3C-FIA is a specialized department to deal with the computer crime. Computer crime is not only about fraud – online or otherwise – it also encompasses areas such as pornography, child sex abuse and the sale of black market goods online. The wide range of data content present in hard drives is potential evidence if seized from a crime scene. The process of forensic acquisition, analysis and reporting of computer storage devices is Computer Forensic. NR3C has state of the art computer forensic facility, and possess leading forensic experts to deal with all computer-related crimes.

2. Mobile Forensics

The increased utility of mobile devices such as smart phones has leveraged the criminals to communicate and use digital application, resultantly storing tremendous amount of data on the device. Criminals use smart phones for a number of activities such as committing fraud over e-mail, harassment through text messages, trafficking of child pornography, communications related to narcotics, etc. The data stored on smart phones is extremely useful to forensic analysts through the course of an investigation. The forensic acquisition, analysis and presentation of data content stored on mobile devices is known as Mobile Forensics. NR3C since inception has dealt with numerous mobile forensic cases, and also facilitates other government installations on such technical assistance.

3. Video Forensics

Video recordings can provide a real time, eye-witness account of a crime so investigators can watch or hear what transpired. For instance, a surveillance video captures a bank robbery in progress, or a hidden camera records. For most crimes, however, high quality video recordings are often not available. This is where forensic video expertise can help. Forensic experts have many techniques to enhance recordings that can bring out details and provide a clearer picture of what occurred. NR3C experts have engaged in numerous video forensic investigations and have successfully identified criminals and terrorist through this forensic method.

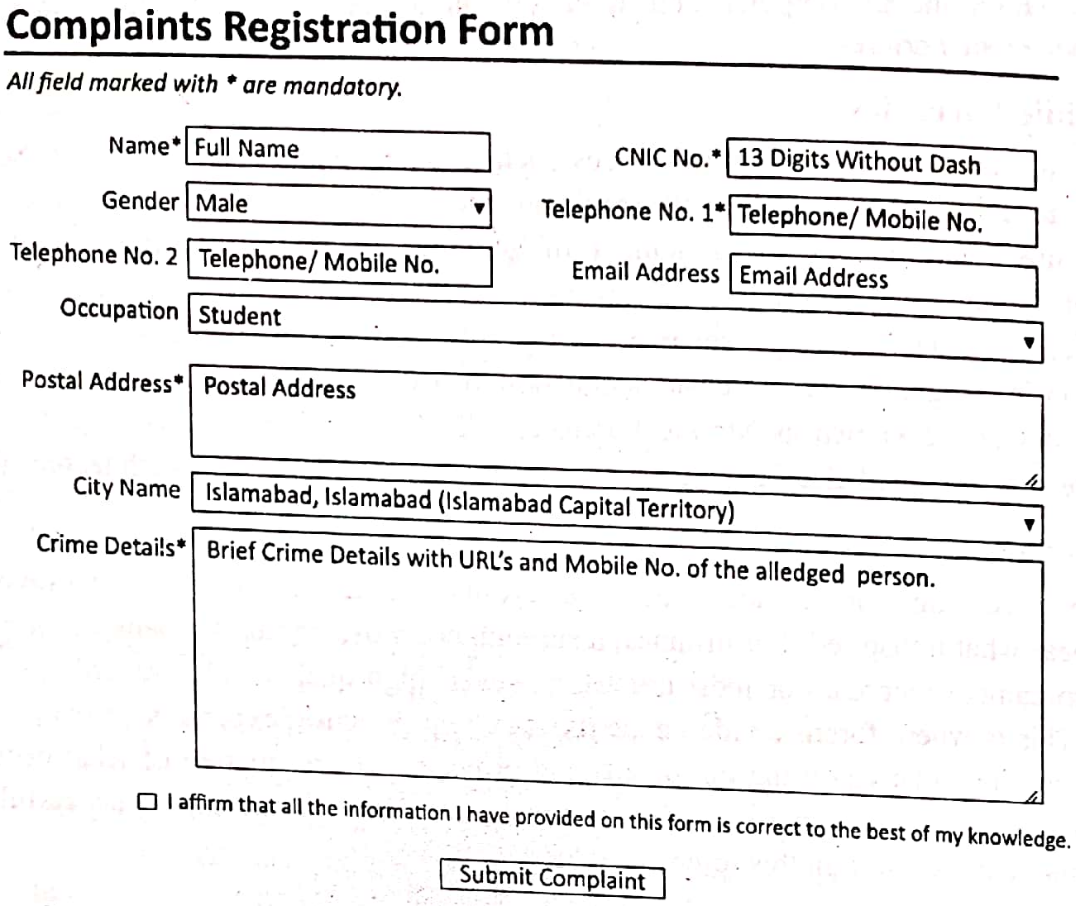
4. Network Forensics

Network forensics is the capture, storage, and analysis of network events. Regardless of the name, the idea is the same: record every packet of network traffic (all emails, all database queries, all Web browsing–absolutely all traffic of all kinds traversing an organization's network) to a single searchable repository so the traffic can be examined in detail. It also includes the forensic examination of network devices such as router, VOIP gateways, IDS/IDP etc. The network device configuration and related data present in these devices is important in cybercrime cases. NR3C has a specialized team to investigate and process network forensic cases. They have successfully analyzed numerous network forensic investigations in past.

5. Technical Training

Development of human resource leverages the organizations to perform efficiently. Trainings, seminars and workshops are instant source of information that gives an edge to professionals to understand and excel in their respective fields. NR3C over years has trained around thousands of individuals of academia, law enforcement agencies, judiciary, police academy, intelligence agencies, etc. Trainings disseminated in relation to digital forensic comprehension of interpreting forensic reports, evidence extraction methods, laws application to judicial community. More than 12,458 individuals from all walks of life ranging from a Grade 6 kid to a decorated officers have been trained by NR3C to serve the purpose cybercrime mitigation.

6. FIA Complaint Registration Form for Cybercrime



Complaints Registration Form

*All field marked with * are mandatory.*

Name*	Full Name	CNIC No.*	13 Digits Without Dash
Gender	Male ▾	Telephone No. 1*	Telephone/ Mobile No.
Telephone No. 2	Telephone/ Mobile No.	Email Address	Email Address
Occupation	Student ▾		
Postal Address*	Postal Address		
City Name	Islamabad, Islamabad (Islamabad Capital Territory) ▾		
Crime Details*	Brief Crime Details with URL's and Mobile No. of the alledged person.		

☐ I affirm that all the information I have provided on this form is correct to the best of my knowledge.

7. Cyber Scouts

FIA also recruits cyber scouts to become part of cybercrime control activity. Cyber Scout is a student with unique aim to promote awareness about cybercrime in the society. A Cyber Scout is trained to identify cybercrime activities, and equipped with adequate preventive knowledge to help fight this menace. He understands the risks associated with virtual socializing and he works to promote cyber safety in his surrounding environment. A Cyber Scout play a vital role to create cyber awareness among fellow students, teachers and parents.

What Do Cyber Scouts Do?

Cyber Scouts are devoted volunteers to help Pakistan fight technology driven crime, by general awareness trainings and other activities to prevent cyber violence. These activities include:

- Cyber Crime Awareness Trainings
- Cybercrime preventive measures
- Cyber Crime Guide distribution to Parents and Teachers
- Sharing information with NR3C
- Promote careful and responsible use of cyber space
- Directing and helping individuals to report cybercrime
- Patrol cyber space
- Encourage good moral use of technology

Enrolment Process of Cyber Scouts

Cyber-crime awareness campaign by NR3C, FIA, enrols Cyber Scouts from different schools and colleges to combat cybercrime at the grassroots level. These Cyber Scouts are selected by NR3C with an aim to create a mass movement of Cyber Wise Environment among the parents, teachers and children of varying ages.

8. Cybercrime Rescue Help Line 9911

"Cyber Rescue Help Line 9911" is round the clock 24/7 Cybercrime complaint registration service dedicated for the general public to address their grievances. NR3C's dedicated personnel are deputed on the Cyber helpline to provide assistance regarding the Cybercrime-related issues and complaint registration. This service provides one window service to register a Cybercrime complaint, and provide assistance to public. If you are a victim of Cybercrime or have related questions, Dial 9911 from your phone/mobile and report your complaint.

Cybercrime Prevention Tips

I. Securing Smart Phones

- Always secure your smartphone with a strong password
- Ensure that your device locks itself automatically
- Install security software
- Only download apps from approved sources
- Check your apps permissions
- Dont miss operating system updates
- Be wary of any links you receive via email or text message
- Turn off automatic Wi-Fi connection
- When browsing or shopping on your phone (or computer), always look for "https" in the url instead of "http"

II. Securing Online Banking

- Never use same PIN CODE for multiple bank accounts
- Never use unprotected PCs at cyber-cafes for Internet banking
- Never keep your pin code and cards together
- Never leave the PC unattended when using internet banking in a public place
- Register for Mobile SMS, Email Transaction Alerts
- Never reply to e-mails asking for your password or pin code
- Visit banks website by typing the URL in the address bar
- Log off and close your browser when you are done using Internet banking
- When using ATM always conceal keypad before entering pin code
- Before using ATM, make sure that there is no extra device installed in the surroundings

III. Securing Facebook

- Use extra security features to access account (security code, login alert, etc.)
- Use login notification alert

- Allow specific individuals to view your contents (videos, photos and friends, etc.)
- Control who can contact you .
- Block your profile from search engines

IV. Securing Wi-Fi

- Change Default Administrator Passwords and Usernames of the Wi-Fi Router
- Use complex password and change Password after regular intervals
- Position the Router or Access Point Safely
- Turn off the Network / Wi-Fi routers if it is not in use

V. Securing Browsing

- What you put online will always remain there
- Never trust any free online content
- Don't provide personal information online to get something free
- Don't click on links inside e-mails or messages

Critical Analysis of Cybercrime Control in Pakistan

I. Problems in Criminal Justice Response to Cybercrime in Pakistan

1. Lack of Investigators in FIA for NR3C
2. Training and expertise issues
3. Lack of Cybercrime investigation facilities in district FIA offices
4. Technical and sophisticated nature of cybercrime investigations
5. Delayed investigation process
6. Many people usually do not report cybercrime
7. Technical challenges for investigators

Cybercrime investigators also face technical challenges. For example, numerous digital devices have proprietary operating systems and software that require the use of specialized tools to identify, collect, and preserve digital evidence. What is more, investigators may not have the necessary equipment and digital forensics tools needed to adequately conduct cybercrime investigations involving digital devices.

Criminal justice agents, such as prosecutors and judges, also require specialized knowledge of cybercrime and digital forensics. Like law enforcement agencies, the sufficiency of training of prosecutors and judges varies between and even within countries. For example, the Crown Prosecution Service in the United Kingdom is well equipped to prosecute cybercrimes, whereas, as of 2016, prosecutors at the local level did not have the same training and resources to prosecute cybercrime. Likewise, Pakistan also lacks mechanism for efficient prosecution and trial of cybercrime at the local or district level.

9. Bungled Investigation

The existing legal framework in the country primarily addresses the substantive side of the law, which is quintessentially conceptual and abstract. The gaps in procedural (and practical) side covering the working of investigative agencies often lead to bungled investigations, and in turn, to failed prosecutions.

10. Issues in Reporting of Cyber Offences

Before an investigation begins, a cybercrime must be reported. While this seems like a straightforward first step in a cybercrime investigation, the reality is that cybercrime is largely underreported worldwide. The underreporting of crime can be explained by economist Gary Becker's expected utility theory, which holds that people engage in actions when the expected utility (i.e. gains) from these actions are higher than the expected utility of engaging in other actions. Applying this theory to cybercrime, victims of cybercrime will not report cybercrimes if the expected utility from this reporting is low. However, a person or organization's willingness to report cybercrime depends on the type of cybercrime. Existing research identifies several reasons why cybercrime is underreported, including

(a) the shame and embarrassment associated with being a victim of certain cybercrimes (e.g. romance scams);

(b) reputational risks associated with publicizing cybercrime (e.g. if the victim of the cybercrime is a business, loss of consumer confidence);

(c) being unaware that victimization occurred; low confidence or expectations that law enforcement can assist them;

(d) too much time and effort to report cybercrime;

(e) and lack of awareness on where to report cybercrime.

In reporting of cyber offences, the most critical question from the point of view of a victim is regarding the appropriate forum. It may be noted that in Pakistan, prevention of crime, its detection, and maintenance of public order are provincial concerns. The areas in which the federation legislates and executes criminal laws usually are specific in nature and have extra-territorial jurisdiction and inter-provincial impact. Nonetheless, this distinction remains opaque. As a result, there is no singular criminal justice system in the country; in fact, the federal and provincial systems coexist. The Prevention of Electronic Crimes Act, 2016 (PECA) treats cybercrime as federal offences: the responsibility to register and investigate crimes, therefore, falls on the federal government. The PECA 2016 provides for extraterritorial jurisdiction and authorizes the federal government to establish or designate a law enforcement agency for investigation of cybercrime. The law also provides for an enabling provision for establishment of a joint investigation team (JIT) by the federal or provincial governments, as the case may be, containing an authorized officer. The restriction that only the authorized agency, and within it the authorized officer, can initiate investigation of cybercrime, narrows down avenues for victims seeking state help in dealing with cybercrime.

11. Gender-based Cybercrime

A report revealed that FIA Lahore received more than 5,500 complaints of cybercrimes in 2018, involving hacking, identity theft, cyber-bullying, cyber-stalking, financial fraud, digital piracy, intellectual property rights, violations, electronic terrorism and extortion. Most of harassment cases are reported where females are victims. FIA had established National Response Centres (NRC), aimed at empowering women so that they could raise their voices against online harassment comfortably. However the NRCs were established only in Karachi, Islamabad, Lahore, Peshawar, Rawalpindi and Quetta, depriving women in other areas the opportunity to report online harassment. Sources further said that the process of filing online complaints is slow as 30 to 60 days are usually required to process a complaint because of which many women avoid reporting their issues.

12. Obstacles in Cybercrime Investigations

There are several obstacles that may be encountered during cybercrime investigations. One such obstacle is created by the anonymity that information and communication technology affords to users. Anonymization techniques are used for legal and illegal reasons. There are legitimate reasons for wanting to remain anonymous online and maintaining the protection of anonymity online. Anonymity enables individuals to engage in activities without revealing themselves and/or their actions to others. There are several anonymization techniques that cybercriminals use. One such technique is the use of proxy servers. A proxy server is an intermediary server that is used to connect a client (i.e. a computer) with a server that the client is requesting resources from. Anonymizers, or anonymous proxy servers, hide users identity data by masking their IP address and substituting it with a different IP address.

13. World Wide Web: The Basics

The most common visualization of the World Wide Web is as an iceberg in the ocean. The part of the iceberg above the surface is known as the Surface Web (or Visible Web or clearnet). This part of the Web includes indexed sites that are accessible and available to the public, and can be searched using traditional search engines, as Google or Bing. The Deep Web is the part of the iceberg that is below the surface. It includes sites that are not indexed by search engines and are not easily accessible and/or available to the public, such as password-protected sites. These sites can be accessed directly if the Uniform Resource Locator (URL; i.e. website address) is known and/or user credentials (i.e. usernames, passwords, passphrases, etc.) are provided to gain access to password-protected websites and online forums. The Dark Web requires the use of specialized software to access its sites because of its use anonymity-enhancing tools to obscure access and hide sites.

The lack of harmonized national cybercrime laws, international standardization of evidentiary requirements (both in terms of admissibility in a court of law, and in terms of international state responsibility), mutual legal assistance on cybercrime matters, and timely collection, preservation, and sharing of digital evidence between countries, also serve as obstacles to cybercrime investigations. In regard to certain types of cybercrime, especially cybercrimes that are politically motivated, a general lack of will of countries to cooperate in these cases has been observed.

II. Recommendations/Suggestions/Remedies/Way Forward

1. Increase in cybercrime investigation officers in FIA.
2. Training of cybercrime investigation officers though coordination with international cyber-crime investigation agencies.
3. Establishment of cybercrime investigation facilities in FIA offices in every district or as an alternative establishment of Cyber Desk in existing police stations all across the country.
4. Speedy and time-bound investigation for cybercrime.
5. Awareness campaigns and encouragement of reporting cybercrime.
6. Inter-institutional watchdog and accountability mechanism for NR3C.
7. As a society, Pakistan needs to take necessary steps to not only to enact legislation covering every aspect of cybercrime but also evolving ways and means to keep amending the laws at par with the changing nature of such high tech crimes.
8. Pakistan should harmonise its laws on cybercrime in conformity with international conventions, treaties and agreements in such a way as to facilitate international cooperation in preventing and combating these illegal cyber activities.

9. The government should focus on capacity building of its law enforcement agencies, especially FIA in the area of cybercrime and explore bilateral, regional, and multilateral cooperation mechanisms to enhance the same.
10. Necessary steps should be taken to create awareness regarding this menace among the masses, with a focus on law enforcement agencies, judiciary and legislature.
11. Pakistan needs to establish a *cyber-crime victim support fund* for to restoration and rehabilitation of the affected people of such crimes.
12. To establish a Research Fund, to support efforts for exploring new methods and techniques to tackle this cybercrime.
13. To formulate a manual of guidelines for government offices and its functionaries regarding safe usage of internet especially social media.
14. Cooperation among Regional and International Agencies for Controlling Cyber-crime

    Beyond national criminal justice agencies, regional agencies, such as the European Union Agency for Law Enforcement Cooperation (Europol) (promoting law enforcement cooperation in the European Union) and Eurojust (promoting judicial cooperation in the European Union), and international agencies, such as INTERPOL (i.e. International Criminal Police Organization; promoting international law enforcement cooperation), assist and/or facilitate cross-border cybercrime investigations. For example, Europol's sharing of intelligence and resources with European Union member states led to the arrest of a criminal, who was known for selling counterfeit EUR 50 banknotes online on illicit dark markets.

Private Sector Role in Controlling Cybercrime

The private sector plays an essential role in the detection, prevention, mitigation, and investigation of cybercrime because it predominantly owns and manages the critical infrastructure (i.e. considered essential to the functioning of society) in countries and is one of the primary targets of many

- cyber-dependent (i.e. those cybercrimes that seek to compromise the confidentiality, integrity, and availability of systems, networks, services, and data, such as hacking, malware distribution, and distributed denial of service or DDoS attacks).
- and cyber-enabled crimes (e.g. online financial fraud, identity-related crime, and theft of data and trade secrets, to name a few).

Because the private sector predominantly owns and manages critical infrastructure and is one of the primary targets of cybercriminals, it is best placed to deploy security measures designed to proactively identify cybercrimes and cybercriminals in an effort to prevent or at the very least mitigate cybercrimes, as well as to respond to the cybercrimes that are occurring or have occurred. The degree to which the private sector deploys these measures depends on the organization, business or type of entity and its human, financial, and technical resources and capabilities.

The private sector also conducts private investigations of cybercrime. The private sector is vulnerable to both internal threats (e.g. cybercrimes committed by employees or executives of the business or organization) and external threats (e.g. cybercrimes committed by those with some connection to the business or organization - for example, a vendor or customer – or those with no association to the business or organization). When a cybercrime occurs, businesses and organizations often do not contact law enforcement authorities. This, however, depends on the cybercrime, the human, technical, and financial resources of the private sector entity, and the impact of the cybercrime on the entity vis-à-vis the impact of the reporting of the cybercrime on the entity (e.g. potential harm to reputation and/or loss of consumer confidence).

Like law enforcement agencies, private companies, and organizations conduct investigations in response to a detected or reported cybercrime. The purpose of this investigation is to obtain information about the incident and build a case against the perpetrator (or perpetrators) of the cybercrime (or cybercrimes). Depending on the size and resources of the private companies and organizations, the investigation may be conducted by investigators on staff or investigators hired from external businesses. Individuals involved in cybercrime investigations include private companies, industry bodies, trade organizations, and companies providing security, investigative, and digital forensics services. At times, information technology professionals and digital forensics experts who are all non-governmental sector stakeholders have been used by private companies and organizations to collect and preserve digital evidence. However, these professionals may not have the necessary expertise to conduct cybercrime investigations and to appropriately handle digital evidence of a cybercrime to ensure its admissibility in courts of law.

(a) Public-Private Partnerships and Task Forces

1. **International Public-Private Partnerships:** The private sector has the human, financial, and technical resources to conduct cybercrime investigations, and can assist national security agencies, law enforcement authorities, and other government agencies on cybercrime matters. In light of this, internationally, numerous public-private partnerships have been developed to enhance countries' capabilities to investigate cybercrime. A case in point is the Interpol's Cyber Fusion Centre, which includes both law enforcement and industry cyber experts, who work together to provide actionable intelligence and share this intelligence with relevant stakeholders (Interpol). TrendMicro (a cyber-security and defence company), Kaspersky (cybersecurity and anti-virus provider), and other private companies that either work on cybercrime or cyber-security related matters, and/or are Internet service and content providers or other Internet companies, work closely with Interpol. The North Atlantic Treaty Organization (NATO) also cooperates with allies, in general, and the European Union and the private industry, in particular, through its Technical Arrangement on Cyber Defence and NATO Industry Cyber Partnership.
2. **National Public-Private Partnerships (PPPs):** Nationally, Public-Private Partnerships (PPPs) have also been developed. In the United States, the National Cyber Forensics and Training Alliance brings together cybercrime subject matter experts from government, academia and the private sector to detect, mitigate, and counter cybercrime (NCFTA). In Japan, a similar PPP to NCFTA was created – the Cybercrime Control Centre. In Europe, the 2Centre partnership includes law enforcement agencies, academia, and the private sector. This PPP began with national centres in Ireland and France and expanded to include national centres in other countries. Greece, Spain, Belgium, Estonia, Lithuania, Bulgaria, and England have centres (Cybercrime Centres of Excellence Network for Training, Research and Education).
3. In addition to PPPs, national task forces have been created to assist in cybercrime investigations. These task forces enable law enforcement agencies of differing jurisdictions within countries (be it local, provincial, or federal/national) to work together on cybercrime cases. These task forces, depending on the country and/or region, can also include members of academia and private companies and organizations. A case in point is the US Federal Bureau of Investigation's National Cyber Investigative Joint Task Force (NCIJTF), which is comprised of...partnering agencies from across law enforcement, the intelligence

community, and the Department of Defence, with representatives who are co-located and work jointly to accomplish the organization's mission from a whole-of-government perspective. As a unique multi-agency cyber centre, the NCIJTF has the primary responsibility to coordinate, integrate, and share information to support cyber threat investigations, supply and support intelligence analysis for community decision-makers, and provide value to other ongoing efforts in the fight against the cyber threat to the nation.

4. Other task forces have been created that deal with specific cybercrimes. For example, the Electronic Crimes Task Force (ECTF), a US Secret Service task force, is responsible for the prevention, mitigation, detection, and investigation of cybercrimes, including those committed against financial payment systems and critical infrastructure. Pursuant to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, the US Secret Service created a network of Electronic Crimes Task Forces (ECTFs) across the United States. These task forces work with local, state, and federal law enforcement agencies, as well as other criminal justice agents (i.e. prosecutors), academia, and the private sector. A European Electronic Crime Task Force (EECTF) was created in 2009. The EECTF collects, analyses, and disseminates information about best practices.
5. **Independent Investigations of Cybercrime:** Although criminal justice agencies, national security agencies, the private sector, PPPs and task forces, are the major actors in conducting cybercrime investigations, independent investigations of cybercrime may also be conducted by civil society institutions, journalists, and the public. A case in point is Citizen Lab, whose published research includes "investigating digital espionage against civil society, documenting Internet filtering and other technologies and practices that impact freedom of expression online, analyzing privacy, security, and information controls of popular applications, and examining transparency and accountability mechanisms relevant to the relationship between corporations and state agencies regarding personal data and other surveillance activities." In addition, members of the public may offer unsolicited assistance to law enforcement by conducting their own independent investigations online; this was observed in the aftermath of the 2013 Boston bombings.
6. **Outsourcing Certain Elements of Cybercrime Investigations:** Moreover, certain elements of a cybercrime investigation can be and have been outsourced (e.g. the identification of illicit material online) to the public through an open call (this process is known as crowdsourcing). For example, "Europol launched a crowdsourcing initiative to expand the search for the origin of child sexual abuse images to the general public. Since the start of the project on June 1, 2017, more than 22000 tips have been sent to Europol which has already resulted in eight children identified and one offender arrested thanks to the help from ordinary citizens."

CONCLUSION

There are many challenges to overcome cybercrimes successfully. To prevent such crimes education and public awareness is necessary. Due to lack of awareness about existing cybercrimes in Pakistani society, the general public is facing many problems. Even the law enforcement agencies are unaware of these crimes due to complex nature of these crimes. Therefore, the proper understanding of such crimes is necessary to control them. Without knowing them, we cannot make adequate laws to punish the criminals. New tools for enforcing gambling laws on the Internet are necessary and to enact law to prohibit wire transfers to Internet gambling sites or the banks which represent such sites. Besides, online consumer protection legislation should be introduced to protect the online consumer and online business industry. Moreover, goods are not provided as per standard or not delivered, consumer protection is also mandatory. Illegal purchase and sale of goods on the Internet shall also be prohibited. The telecommunication is directly involved for providing services to the Internet user, data transmission is very fast.

There is a dire need to get the information as early as possible for the investigation purposes. However, if the telecommunication industry is not providing latest data and detail of it, then it will make very difficult for law enforcement agencies especially FIA to investigate the crimes expeditiously. The problem is that many investigators have neither requisite expertise nor the required experience to deal with investigation, evidence collection, evidence preservation and presentation to the court. Therefore, the offender cannot be punished properly. Technology is constantly evolving, investigating electronic crimes will always be difficult because of the ease of altering the data and the fact that transactions may be done anonymously. Due to alteration of data, the investigation of cybercrimes is very complicated as compare to manual crimes. However, by adopting latest techniques the complexity of the digital crime can be reduced.